

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ERIC R WOOD
Claimant

APPEAL 16R-UI-13288-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TRADESMEN INTERNATIONAL LLC
Employer

**OC: 10/11/15
Claimant: Appellant (2)**

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.4(3) – Able and Available
Iowa Admin. Code r. 871-24.22(2)j – Benefit Eligibility Conditions – Leave of Absence
Iowa Admin. Code r. 871-24.23(10) – Availability Disqualifications – Leave of Absence

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 1, 2016, (reference 01) unemployment insurance decision that denied benefits based upon his availability for work. The parties were properly notified about the hearing. A telephone hearing was held on January 17, 2017. Claimant participated. Employer did not participate. Claimant's Exhibits A through C were received. Department's Exhibit D-1 was received.

ISSUES:

Is the appeal timely?
Is the claimant able to work and available for work effective August 7, 2016?
Is the claimant on an approved leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The unemployment insurance decision was mailed to the appellant's address of record on September 1, 2016. The appellant received the decision before September 11, 2016, within the appeal period. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by September 11, 2016.

Claimant sent an appeal via email on September 11, 2016. However, due to a typographical error in the email address, the appeal was not received. (Exhibit A) The next day, on September 12, 2016, claimant saw his email had been returned. However, claimant did not notice the typographical error in the email address and did not understand why the appeals bureau did not receive his email. Thus, claimant called the agency's customer service hotline to request help. The customer service representative with whom claimant spoke told claimant that he needed to go to his local office for help. Claimant's local office is a 40 minute drive from his home and claimant was working at least 50 hours per week during that time period. Thus, he

did not have an immediate opportunity to visit his local office. Claimant spoke with his brother, who works for employer. Claimant asked his brother to file something on his behalf. On September 28, 2016, claimant's brother filed an appeal of the September 1, 2016, (reference 01) decision. (Exhibit B) On October 3, 2016, claimant finally had the opportunity to visit his local office. Claimant took time off of work to make the trip. While at the local office, claimant successfully filed an online appeal. (Exhibit C)

The claimant was temporarily laid off on August 7, 2016. Claimant was able to and available for work during the week ending August 13, 2016. Claimant's daughter underwent a tonsillectomy that week. Because claimant was laid off, he was able to attend the surgery. The surgery only took a few hours. Claimant did not request medical leave to be present with his daughter. Other family members were available to be present with his daughter, and claimant was able to and available for work and would have worked had there been work available for claimant.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is.

Iowa Code § 96.6(2) provides, in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

The appellant's attempt to file an appeal in a timely manner was thwarted by a typographical error. Claimant immediately sought advice from a customer service representative. However, the customer service representative gave claimant incorrect information. Instead of instructing claimant to mail his appeal with a copy of the rejected email, a customer service representative instructed claimant he needed to go to his local office. Claimant was working more than 40 hours per week and lives 40 minutes away from his local office, so he was not able to do that until October 3, 2016. Meanwhile, claimant realized he needed to get his appeal in and asked his brother to send in an appeal on his behalf, which he did on September 28, 2016. Claimant then filed an appeal himself as soon as he was able to make it to his local office, which was on October 3, 2016. Claimant's delay in filing the appeal was due to incorrect information received from IWD. This delay was prompted by and perpetuated by the agency. See, Iowa Admin. Code r. 871-24.35(2). Therefore, the appeal shall be accepted as timely.

The next issue is whether the claimant was able to and available for work during the week ending August 14, 2016. The administrative law judge concludes he was.

Iowa Code § 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

In this case, claimant happened to be laid off during the same week his daughter had scheduled surgery. Claimant did not request a medical leave of absence to attend the surgery and would not have attended the surgery had work been available. The surgery consisted of a very short part of the overall work week, and claimant was available for and would have worked instead had work been available.

DECISION:

The appeal is timely. The September 1, 2016, (reference 01) unemployment insurance decision is reversed. The claimant is able to work and available for work effective August 7, 2016. Benefits are allowed.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

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