

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHERRY K DANIEL
Claimant

IOWA PREMIUM LLC
Employer

APPEAL 17A-UI-10115-NM-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/16/17
Claimant: Appellant (2)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 18, 2017, (reference 02) unemployment insurance decision that denied benefits based on her inability to perform work due to illness. The parties were properly notified of the hearing. A telephone hearing was held on October 18, 2017. The claimant participated and testified. The employer's representative was not available at the number provided at the time of the hearing and therefore did not participate. Claimant's Exhibits A through C and Department's Exhibit D-1 were received into evidence.

ISSUES:

Is the appeal timely?
Is the claimant able to work and available for work effective July 16, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The unemployment insurance decision dated August 18, 2017 (reference 02) had an appeal deadline of August 28, 2017. Claimant testified the envelope the decision was mailed to her in had a postmark of August 30, 2017, and she received it the following weekend at her address of record. Claimant was confused by the decision as she had previously received an unemployment insurance decision, dated August 8, 2017 (reference 01), allowing benefits based on her June 18, 2017 separation from the employer. Claimant went to her local office the following Tuesday, September 5, to see if they could clarify things for her. A representative at the local office explained to claimant that the decisions were two separate decisions and if she disagreed she needed to appeal. Claimant then used the computer at her local office to file an appeal of the August 18 (reference 02) decision. Claimant did not receive a confirmation email but had no reason to believe her appeal was not filed correctly. Claimant testified she later received another decision on the mail, this one several pages long, telling her she qualified for benefits. The administrative record shows the employer filed an appeal of the August 8, 2017 (reference 01) decision and a hearing on that matter was scheduled for August 29, 2017.

Administrative Law Judge Jeremy Peterson issued a decision favorable to the claimant on the issue of separation following that hearing.

Claimant continued to wait for information regarding her appeal of the August 18 (reference 02) decision and when she had not heard anything by September 18, 2017, she contacted Iowa Workforce Development. Claimant testified she was then transferred to the Appeals Bureau, who indicated she should be receiving something in the mail. Claimant again waited, but when she did not hear anything by October 4, 2017, she went into her local office for assistance. At this time claimant learned her appeal had never been received. A staff member at the local office was able to assist her in filing her appeal that day.

On March 3, 2017, prior to being separated from employment, claimant was placed on medical leave by the employer. Claimant was released to return to work on March 27, 2017 without restriction. However, claimant testified she did not return to work at this time, as she had been experiencing some pain and swelling in her joints, unrelated to her initial medical leave, that the employer wanted addressed prior to her returning to work. Claimant made an appointment with her general practitioner who released her to return to work on June 5, 2017. At that time, the employer told claimant she needed to see a specialist prior to returning to work. Claimant did as she was instructed and was diagnosed by the specialist with osteoarthritis. On July 18, 2017, following this diagnosis, claimant was permanently restricted from climbing on ladders or beams, getting down on her hand and knees, or doing repetitive motions with her hands. (Exhibit A). Claimant has been looking for jobs within these restrictions and was able to provide several examples of types of jobs, such as retail and cashier work, at which she has been applying.

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 section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The August 18, 2017 decision identifies an appeal deadline of August 28, 2017. The appellant did not have an opportunity to appeal the unemployment insurance decision by this date because the DAS postmark date was well after the IWD decision mailing date. Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). Once claimant received the decision, she was confused and went to her local office for clarification. The decision was explained to claimant and she believed she filed an appeal online while in her local office that same day. For some unknown reason, claimant's appeal was never received. When claimant had not heard anything by September 18, 2017, she contacted the Appeals Bureau and was told she would be receiving something in the mail. It is possible, given that claimant was a party in an appeal hearing at the end of August that the Appeals Bureau staff was confused as to which appeal she was referring to and failed to identify that no appeal was on record for the August 18 (reference 02) decision. Claimant again waited and when she did not hear anything went to her local office, where they informed her no appeal had been filed. Upon learning this, claimant was immediately able to successfully file her appeal that same day. The delay in claimant's filing was caused by a series of missteps and misinformation 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 is able and available for work. For the reasons that follow, the administrative law judge concludes the claimant is able to work and available for work effective July 16, 2017.

Iowa Code section 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".

Iowa Admin. Code r. 871-24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of

establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.23(35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

Since the employment ended in June 2017, claimant is no longer obligated to return to employer upon a medical release to offer services. At that point, ability to work is not measured by the job she held most recently, but by standards of her education, training, and work history. Claimant provided credible testimony that she is able to perform a variety of jobs, such as retail or cashier work, within her restrictions and according to her abilities. Thus claimant is considered able to work as of July 16, 2017. The claimant is on notice that she must conduct at least two work searches per week and file weekly claims in order to retain eligibility for benefits.

DECISION:

The unemployment insurance decision dated August 18, 2017 (reference 02) is reversed. The claimant's appeal is timely. The claimant is able to work and available for work effective July 16, 2017. Benefits are allowed, provided she is otherwise eligible.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/scn