

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GLEN D REEL
Claimant

APPEAL 24A-UI-05227-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 04/07/24
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

Glen D. Reel, the claimant/appellant,¹ appealed the Iowa Workforce Development May 17, 2024 (reference 02) unemployment insurance (UI) decision. IWD denied Mr. Reel REGULAR (state) UI benefits as of April 7, 2024 because IWD concluded he was not able to work as of this date due to illness. On May 31, 2024, the Iowa Department of Inspections, Appeals and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to Mr. Reel for a telephone hearing scheduled for June 18, 2024.

The administrative law judge held a telephone hearing on June 18, 2024. The administrative law judge heard appeals 24A-UI-05227-DZ-T and 24A-UI-05228-DZ-T together and created one hearing record. Mr. Reel participated in the hearing personally. Lana Floy, Mr. Reel's sister, participated as a witness for Mr. Reel. The administrative law judge admitted Department's Exhibit 1, and Claimant's Exhibits A as evidence.

The administrative law judge concludes Mr. Reel appealed on time, but he is eligible for UI benefits as of April 7, 2024, the first of his UI claim, because he is able to and available for work as of this date.

ISSUE:

Did Mr. Reel appeal on time?

Is Mr. Reel able to and available for work as of April 7, 2024?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: IWD mailed the May 17, 2024 (reference 02) UI decision to Mr. Reel at his correct mailing address. The UI decision states that it becomes final unless an appeal is postmarked or received by the IWD Appeals Section by Monday, May 27, 2024.

¹ Claimant is the person who applied for UI benefits. Appellant is the person or employer who appealed.

Mr. Reel has been staying at his sister, Ms. Floy's, home often as he recovers from surgery. Ms. Floy checks Mr. Reel's mail every couple of days. Ms. Floy opens Mr. Reel's mail and discusses it with him. Mr. Reel never received the decision that denied him UI benefits.

On May 29, 2024, IWD mailed Mr. Reel another UI decision. In this reference 03 decision, IWD concluded that IWD overpaid Mr. Reel \$2,555.00 in REGULAR (state) UI benefits for five weeks between April 7, 2024 and May 11, 2024 because the May 17, 2024 (reference 02) UI decision denied him UI benefits as of April 7, 2024. The appeal deadline in this decision was Saturday, June 8, 2024. If the appeal deadline falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. So, the appeal deadline was extended to Monday, June 10, 2024. Mr. Reel received this decision in the mail.

Mr. Reel appealed online on May 29, 2024. The DIAL, UI Appeals Bureau received the appeal the same day.

The administrative law judge further finds: Mr. Reel underwent hip surgery on March 26. Mr. Reel's medical provider advised him to not return to work because he was scheduled for surgery on his other hip on May 6. Mr. Reel underwent a second hip surgery on May 6. Mr. Reel's medical provider advised him to not work for the next three months. Mr. Reel underwent a third surgery on May 23. Mr. Reel's doctor continues to advise him to not work as he recovers.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Reel appealed the May 17, 2024 (reference 02) UI decision on time, but he is not able to and available for work as of April 7, 2024.

Mr. Reel Appealed on Time

Iowa Code § 96.6(2) provides, in relevant part: "[u]nless 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."

Iowa Admin. Code r. 871-24.35(1) provides:

2. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:
 - (2) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.
 - (b) If transmitted via the State Identification Date Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed.² Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid.³

Mr. Reel never received the May 17, 2024 (reference 02) UI decision. Mr. Reel appealed as soon as he received the May 29, 2024 (reference 03) overpayment decision. Mr. Reel appealed on time.

Mr. Reel is Not Able To and Available For Work as of April 7, 2024
So, He is Not Eligible For UI Benefits As of April 7, 2024

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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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:

Benefit 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.

² *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979).

³ *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

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(10) and (35) provide:

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

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

(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.

To be able to work, "[a]n 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."⁴ "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides."⁵ A person claiming benefits has the burden of proof that she is able to work, available for work, and earnestly and actively seeking work.⁶

In this case, Mr. Reel's medical provider has not yet released him to return to work after his three surgeries. Mr. Reel is not able to and available for work as of April 7, 2024, the first day of his UI claim. So, Mr. Reel is not eligible for UI benefits as of April 7, 2024.

⁴ *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1).

⁵ *Sierra* at 723.

⁶ Iowa Admin. Code r. 871-24.22.

DECISION:

Mr. Reel appealed the May 17, 2024 (reference 02) UI decision on time. The May 17, 2024 (reference 02) UI decision is AFFIRMED. Mr. Reel is not able to and available as of April 7, 2024. So, he is not eligible for UI benefits as of this date.



Daniel Zeno
Administrative Law Judge

June 19, 2024
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.