

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**SAMER F KAFAWAIN**  
Claimant

**SWIFT PORK COMPANY**  
Employer

**APPEAL 17A-UI-09175-JP-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/06/17**  
**Claimant: Appellant (2)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 24, 2017, (reference 02) unemployment insurance decision that denied benefits as of August 6, 2017. After due notice was issued, a hearing was held by telephone conference call on September 26, 2017. Claimant participated. The employer did not register for the hearing and did not participate. Official notice was taken of the administrative record, including claimant's appeal letter and weekly continued claims history, with no objection.

**ISSUE:**

Is the appeal timely?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: An ineligibility unemployment insurance decision (reference 02) was mailed to claimant's last known address of record on August 24, 2017. Claimant believed he received the decision on September 1, 2017. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by September 3, 2017. It is noted that September 3, 2017 was a Sunday and September 4, 2017 was a holiday, therefore claimant had until September 5, 2017 to file his appeal. The appeal was not filed until September 6, 2017, which is after the date noticed on the unemployment insurance decision.

Claimant received two separate decisions at the same time; one decision (reference 01) allowed him benefits and the other decision (reference 02) denied him benefits. On September 5, 2017, claimant contacted Iowa Workforce Development (IWD) in Des Moines because he had two conflicting decisions. The IWD employee instructed claimant to take his doctor's note that released him to return to work to his local office. On September 6, 2017, claimant went to his local IWD office in Ottumwa, Iowa. Claimant provided the local office a copy of his doctor note that released him to return to work with no restrictions as of July 31, 2017. Claimant was not aware that this would be considered an appeal of the unemployment insurance decision.

Claimant's doctor has released him to return to work with no restrictions as of July 31, 2017. Claimant returned to the employer on July 31, 2017 and worked for the employer until August 3, 2017. Claimant was separated from the employer on August 3, 2017. Claimant has been making a minimum of two job contacts a week since he filed his claim for benefits.

### **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.

Claimant's failure to file an appeal within the appeal period was due to incorrect information he received from an IWD employee. On September 5, 2017, within the appeal period, claimant contacted IWD because of two conflicting decisions he received. The IWD employee instructed claimant that he just needed to take his doctor's note to his local office. Claimant then followed the instructions and provided his doctor's note to his local office on September 6, 2017. Claimant discovered the misinformation when he provided his doctor's note to the local office and it was treated as an appeal. Claimant's delay in filing an appeal 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 claimant is able to work and available for work effective August 6, 2017. The administrative law judge concludes claimant is able to work and available for work effective August 6, 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.

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." *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). "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." *Sierra* at 723.

Inasmuch as claimant's treating physician released him to return to work without restriction effective July 31, 2017 and he returned to work for the employer from July 31, 2017 to August 3, 2017, but was separated from employment on August 3, 2017, claimant has established he is

able to and available for work. Claimant has been making a minimum of two job contacts since he filed his claim for benefits.

Since claimant was released to return to work on July 31, 2017, without restriction, he is considered eligible for benefits effective August 6, 2017. Benefits are allowed effective August 6, 2017.

**DECISION:**

The August 24, 2017, (reference 02) unemployment insurance decision is reversed. Claimant's appeal is timely. Claimant is able to work and available for work effective August 6, 2017. Benefits are allowed, provided he is otherwise eligible.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

jp/rvs