

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RAMO COVIC
Claimant

CENTRAL IOWA READY MIX INC
Employer

APPEAL 18A-UI-10656-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/17/17
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 15, 2018, (reference 01) unemployment insurance decision that denied benefits based upon a determination that he is unable to work due to injury. The parties were properly notified about the hearing. A telephone hearing was held on November 9, 2018. Claimant participated and testified with the assistance of a Bosnian interpreter from CTS Language Link. Claimant was represented by attorney Mark Spellman. Also present on behalf of claimant, but not testifying, was his wife, Razija Mujanovic. Employer participated through General Manager Keith Kuennen. Departments Exhibit D-1, claimant's Exhibit A, and employer's Exhibit 1 were all received into evidence.

ISSUES:

Is the appeal timely?

Is the claimant able to work and available for work effective September 16, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on April 28, 2014. Claimant last worked as a full-time truck driver. On November 25, 2017, claimant fell while at work, hitting his abdomen on a blunt object. Claimant went and saw a doctor following his fall and the doctor concluded the impact to his abdomen caused a hernia. Claimant saw two other doctors who concurred that the hernia was caused by claimant's fall while at work. The employer's doctor has offered a differing opinion, stating that hernias are generally caused by lifting heavy objects over time. There is pending worker's compensation litigation to resolve the matter.

Following his injury, claimant was placed on light duty. The employer was able to accommodate claimant's light duty by having him drive a dump truck. On September 17, 2018, claimant's doctor issued new restrictions. The restrictions directed no bending, twisting, or lifting of more than 30 pounds and no operating heavy equipment such as dump trucks. (Exhibit A). The employer could not accommodate this restriction so claimant was placed on FMLA leave.

Claimant was still on FMLA leave at the time of the hearing and had not yet been separated from employment, but was not working as no work within his restrictions was available.

A disqualifying unemployment insurance decision was mailed to the claimant's last known address of record on October 15, 2018. The address on the decision was incomplete, as claimant's apartment number was missing, and he never received a copy of the decision. Approximately ten days after the initial fact-finding interview claimant contacted Iowa Workforce Development to ask about the decision, it was at this time he first learned that a decision had been issued. Claimant never received a copy of the written decision, but was nevertheless able to file an appeal with the assistance of his attorney. The appeal was filed on October 26, 2018. (Exhibit D-1).

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 appellant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without 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). The

claimant filed an appeal within a reasonable period of time after discovering the disqualification and learning of his appeal rights. Therefore, the appeal shall be accepted as timely.

The next issue to be decided is whether claimant is able to and available for work. For the reasons that follow, the administrative law judge concludes he is.

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. 871-24.23(1) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

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.

Claimant was given work restrictions after a fall at work resulted in a hernia. Three of claimant's doctors have reached the opinion that this injury was work-related. The employer's doctor disagrees with these opinions, stating that this mode of injury is not typically how hernias occur. For the purposes of unemployment insurance benefits only, the claimant has presented credible evidence that the injury was work related. To be clear, this determination is for the purposes of unemployment benefits only, as "[a] finding of fact or law, judgment, conclusion, or final order made pursuant to this section by an employee or representative of the department, administrative law judge, or the employment appeal board, is binding only upon the parties to proceedings brought under this chapter, and is not binding upon any other proceedings or action involving the same facts brought by the same or related parties before the division of labor services, division of workers' compensation, other state agency, arbitrator, court, or judge of this state or the United States." Iowa Code §96.6(4). This provision makes clear that unemployment findings and conclusions are only binding on unemployment issues, and have no effect otherwise. See *also* Iowa Code §96.11(6)(b)(3) ("Information obtained from an employing unit or individual in the course of administering this chapter and an initial determination made by a representative of the department under section 96.6, subsection 2, as to benefit rights of an

individual shall not be used in any action or proceeding, except in a contested case proceeding or judicial review under chapter 17A...).

Initially, the employer was able to accommodate claimant's restrictions, but when a new restriction preventing him from driving a dump truck was put in place on September 17, 2018, the employer no longer had accommodations available. Inasmuch as the injury is considered work-related for the purposes of unemployment insurance benefits only and the treating physician has released the claimant to return to work, even with restrictions the claimant has established ability to work. Because the employer had no work available or was not willing or able to accommodate the work restrictions, benefits are allowed.

DECISION:

The October 15, 2018, (reference 01) unemployment insurance decision is reversed. The appeal is timely. The claimant is able to work and available for work effective September 16, 2018. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs