

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**DANIELLE CLIPPARD**  
Claimant

**APPEAL NO: 13A-UI-06587-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 05/22/11  
Claimant: Appellant (2)**

Section 96.6-2 – Timeliness of Appeal  
871 IAC 24.35(2) – Appeal Delay  
Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated May 29, 2012, reference 03, that held she was not able to perform work, and benefits are denied as of May 22, 2011. A telephone hearing was held on June 27, 2013. The claimant participated.

**ISSUES:**

Whether the claimant filed a timely appeal.

Whether claimant is able and available for work.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record, finds: The department mailed the decision to claimant's address of record on May 29, 2012 with an appeal deadline date of June 8. The claimant submitted an appeal on May 22, 2013 to an Administrative Law Judge. Claimant had moved from her address in August 2011 and the department decisions were not forwarded to her by the postal service. When claimant learned about the decisions from the judge on another matter, she immediately requested an appeal.

Claimant submitted some medical information questionnaires to a Promise Job worker on May 22, 2012. While claimant was diagnosed with sleep apnea and possible carpal tunnel issues with her hands, the work availability issue involved disability that was not determined at that time.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code Section 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.

871 IAC 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 department that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service or its successor.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The department shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to department error or misinformation or delay or other action of the United States postal service or its successor, the department shall issue an appealable decision to the interested party.

The administrative law judge concludes claimant filed a timely appeal as the postal service did not forward the decision to her new address and she did not learn about the disqualification until she appeared before an Administrative law judge on an unrelated matter.

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".

The administrative law judge further concludes there is no availability disqualification issue as of May 22, 2011.

The claimant's medical questionnaire was submitted for the Promise Job program on May 12, 2012. The department retroactively applied the information to May 22, 2011 to disqualify claimant that is too remote in time and place for the claimant to be given a meaningful opportunity to reply to it.

**DECISION:**

The department decision dated May 29, 2012, reference 03, is reversed. The claimant filed a timely appeal. No availability disqualification is imposed May 22, 2011. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs