

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**RONNIE M MCCONNELL**  
Claimant

**WELLS FARGO FINANCIAL NAT'L BANK**  
Employer

**APPEAL 17A-UI-07925-JCT**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 07/02/17**  
**Claimant: Appellant (2)**

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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 July 20, 2017, (reference 04) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 24, 2017. The claimant participated personally. The employer sent in a letter prior to the hearing stating it would not be participating in the hearing. Department Exhibit D-1 was admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Is the appeal timely?  
Is the claimant able to work and available for work effective July 2, 2017?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant separated from his full-time employment at Wells Fargo, effective June 30, 2017. The claimant is currently seeking employment consistent with his experience, in the Des Moines metro area, including Ankeny, and searching for full-time employment, including at Menards, McDonalds and Wal-Mart. He has no medical or physical restrictions to employability and began part-time employment in asset protection at Wal-Mart, effective August 11, 2017, earning \$13.20 per hour. The claimant is continuing to search for full-time employment and has no other restrictions of employability.

The unemployment insurance decision was mailed to the appellant's address of record on July 20, 2017. The claimant shares the residence and address with a significant other, whose grandmother owns the home. The claimant has experienced repeated delays with the postal service delivery prior to this decision, and which have been reported. The appellant did not

receive the decision until August 5, 2017, after the ten-day to appeal had expired. He immediately filed his appeal thereafter (Department 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 unemployment insurance decision because the decision was not received in a timely fashion, because of delay from the postal service. The claimant has previously reported concerns to the postal service about untimely arrival of mail. 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). The appellant filed the appeal within a day of receipt. Therefore, the appeal shall be accepted as timely.

The next issue is whether the claimant is able to and available for work, effective July 2, 2017. For the following reasons, the administrative law judge concludes he is.

For an individual to be eligible to receive benefits, he must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code Section 96.4-3. The claimant has the burden to show he is able to work, available for work, and earnestly and actively seeking work. The unemployment insurance rules require that an

individual be physically and mentally able to work in some full time gainful employment, not necessarily in the individual's customary occupation, but a job which is engaged in by others as a means of livelihood. 871 IAC 24.22(1).

In this case, the evidence establishes the claimant is able to and available for work as defined by the unemployment insurance law, even with part-time employment. The claimant remains available and actively seeking full-time employment and has no other restrictions to availability or ability to work. Therefore, the claimant is allowed benefits, provided he is otherwise eligible.

**DECISION:**

The July 20, 2017, (reference 04) decision is reversed. The appeal is timely. The claimant is able to and available for work effective July 2, 2017. He is required to report gross wages earned for each week of benefits claimed.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

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