

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

BRANDON D SIMMERMAN  
6705 COUNTRY HILL RD APT #1  
CEDAR RAPIDS IA 52402

IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT

Appeal Number: 04A-UI-09402-DWT  
OC: 08/01/04 R: 03  
Claimant: Appellant (4)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.***

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.

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 are based.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.4-3 – Ability to and Availability for Work  
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Brandon D. Simmerman (claimant) appealed a representative's August 18, 2004 decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits as of August 1, 2004, because he was ill and not able to work. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on September 24, 2004. The claimant participated in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

#### ISSUES:

Did the claimant file a timely appeal or establish a legal excuse for filing a late appeal?

Is the claimant able to and available for work as of August 1, 2004?

#### FINDINGS OF FACT:

The claimant's last day of work for his most recent employer was August 7, 2004. The claimant established a claim for unemployment insurance benefits during the week of August 1, 2004. The claimant had a medical situation for which he was being treated. The claimant went to his doctor at a hospital on August 6. He was again examined or treated at the hospital on August 9. The claimant looked for work and was able to work the week of August 8, 2004. The claimant had surgery on August 18, 2004. As of August 18, the claimant was not able to work.

On August 18, 2004, a representative's decision was mailed to the claimant. This decision indicated the claimant was not eligible to receive unemployment insurance benefits as of August 1, 2004, because he was ill and was not able to or available for work.

The claimant received the representative's decision on August 25 or 26, 2004. He was staying with his parents while recuperating from the surgery. His parents live in a rural community. On August 28, 2004, the claimant went to the town's post office, bought stamps and mailed his appeal letter. The postmark on the appeal's letter envelope is August 31 from Cedar Rapids, Iowa.

#### REASONING AND CONCLUSIONS OF LAW:

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's decision is mailed to the parties' last-known address, files an appeal from the decision, the decision is final. Benefits shall then be paid or denied in accordance with the representative's decision. Iowa Code §96.6-2. Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983).

The Iowa Supreme Court has ruled that appeals from unemployment insurance decisions must be filed within the time limit set by statute and the administrative law judge has no authority to review a decision if a timely appeal is not filed. Franklin v. IDJS, 277 N.W.2d 877, 881 (Iowa 1979); Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979). In this case, the facts establish the claimant filed his appeal on August 28 or within the deadline to appeal. Therefore, the claimant filed a timely appeal.

Each week a claimant files a claim for benefits, he must be able to and available for work. Iowa code §96.4-3. Even though the claimant's medical problem existed prior to August 1, he was able to and available for work prior to August 1. The facts establish the claimant worked the week of August 1 and he was able to and available for work the week of August 8, 2004. It was not until August 18, that the claimant was not able to or available for work. The claimant established that for the weeks ending August 7 and 14, 2004, he is eligible to receive benefits because he was able to and available for work. The claimant is not eligible to receive benefits as of August 15, 2004.

DECISION:

The representative's August 18, 2004 decision (reference 02) is modified in the claimant's favor. The claimant filed a timely appeal because he mailed it at a post office on August 28, 2004. Therefore, the Appeals Section has jurisdiction to address the merits of his appeal. The claimant is eligible to receive benefits for the weeks ending August 7 and 14, 2004 because he was able to work and available for work these weeks. The claimant is not eligible to receive benefits as of August 15, 2004. This ineligibility continues until the claimant reopens his claim and establishes he is able to and available for work.

dlw/b