

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DUANE E SULLEY
Claimant

APPEAL NO. 09A-UI-03826-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 09/07/08
Claimant: Appellant (1)

Section 96.4-3 – Able and Available for Work
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated October 30, 2008, reference 03, which denied benefits effective September 7, 2008 finding that the claimant was not able to perform work. After due notice a telephone conference hearing was scheduled for and held on April 6, 2009. Mr. Sulley participated personally.

ISSUE:

The issue in this matter is whether the claimant filed a timely appeal and whether the claimant was able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Mr. Sulley opened a claim for unemployment insurance benefits effective September 7, 2008. The claimant was determined to be ineligible for benefits as of September 7, 2008. Mr. Sulley had suffered a psychological episode which had required him to be hospitalized in rehabilitation at the Veterans administrative facility in Omaha, Nebraska for a substantial period of time.

The claimant did not file a timely appeal in this matter as the claimant was experiencing marital difficulties and believes that the notice of the representative's decision had been removed by his former wife without the claimant's knowledge.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that the claimant has established good cause for late filing of his unemployment insurance decision based upon the claimant's non receipt of the fact-finder's decision and thus his inability to file a timely appeal within the ten-day statutory time limit.

The question is whether the evidence in the record establishes that the claimant was able and available for work effective September 7, 2008. It does not.

The evidence in the record establishes that the claimant was hospitalized at the Veterans administration facility in Omaha, Nebraska for an extended period for rehabilitation after having a psychological episode and because of the excessive consumption of alcohol. Mr. Sulley, it appears, had voluntarily committed himself for the extended rehabilitation services that were available to him through the Veterans Administration.

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".

871 IAC 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.

The evidence in the record establishes that the claimant was unable to work due to illness or injury and was committed to an in-patient program beginning on or about September 7, 2008. The claimant was determined to be eligible to receive unemployment insurance benefits beginning November 23, 2008 as he was determined to be available for work and medically able to work at that time.

DECISION:

The representative's decision dated October 30, 2008, reference 03, is affirmed. The claimant was not able and available for work as of September 7, 2008 through November 23, 2008 and is ineligible to receive unemployment insurance benefits during that period.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs