

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANGELA L WILDE**  
Claimant

**APPEAL NO. 09A-UI-08106-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DSI SECURITY SERVICES**  
Employer

**OC: 04/12/09**  
**Claimant: Appellant (1)**

Section 96.4(3) – Able and Available  
Section 96.6(2) – Timeliness of Appeals

**STATEMENT OF THE CASE:**

Angela Wilde filed an appeal from a representative's decision dated May 19, 2009, reference 01, which denied benefits effective April 12, 2009 on a finding that she was not able to work. After due notice was issued, a hearing was held by telephone on June 22, 2009. Ms. Wilde participated personally. The employer participated by Mary Clark, Operations Manager.

**ISSUE:**

The first issue in this matter is whether Ms. Wilde filed a timely appeal. If the appeal is determined to be timely, the issue then becomes whether she is able to and available for work within the meaning of the law.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: The representative's decision that is the subject of this appeal was mailed to Ms. Wilde at her address of record on May 19, 2009. It indicated that an appeal had to be filed by May 29, 2009. Ms. Wilde's appeal was filed at her local office and was dated May 27, 2009. Although the appeal is initialed by a Workforce Development claims taker, it is not dated as to what date it was received at the local office. The appeal was received in the Appeals Bureau on June 4, 2009. There is no envelope accompanying the appeal and there is no fax transmission line on it.

Ms. Wilde began working for DSI Security Services on December 14, 2006 as a full-time security officer. She last performed services on June 25, 2008 and was off work thereafter under the Family and Medical Leave Act (FMLA). She underwent back surgery on August 25 and September 19, 2008. The surgery was not necessitated by any condition or injury related to the employment. Ms. Wilde was released to return to work in January of 2009. At that time, she was limited to working four hours each day for five days a week beginning January 12 and increasing to eight hours a day. She was also limited to lifting no more than 20 pounds, to increase by five pounds every two weeks for a maximum of 50 pounds.

The employer advised Ms. Wilde in January that she could not return to her job until she received a full release. Her job has been held open pending her return but she has not provided the employer with a release that would allow her to work without restrictions. As of the date of the hearing herein, Ms. Wilde still had not been fully released to return to work.

**REASONING AND CONCLUSIONS OF LAW:**

Ms. Wilde had ten days in which to appeal the May 19, 2009 decision that disqualified her from receiving benefits. Iowa Code section 96.6(2). Ms. Wilde's appeal is dated May 27, 2009. There was no evidence that she did not, in fact, file her appeal at the local Workforce Development office on that date. Since the local office representative did not indicate a date on which it was received, any doubt will be resolved in Ms. Wilde's favor. It is concluded, therefore, that the appeal was filed timely.

Ms. Wilde has been off work since June of 2008 on the advice of her doctor because of a back condition that resulted in surgery. The employer was immediately notified of the need to be gone and placed her on FMLA. Ms. Wilde did re-offer her services to the employer when she was released in January. However, she had not recovered from her condition when she re-offered her services. Where the medical condition that causes absence from work is not work-related, an individual must have a complete release when she re-offers her services in order to satisfy the requirements of Iowa Code section 96.5(1)d. See Hedges v. Iowa Department of Job Service, 368 N.W.2d 862 (Iowa App. 1985).

Because Ms. Wilde has not been fully released to return to work, it must be concluded that she has not recovered from her medical condition as required by section 96.5(1)d. Furthermore, in order to receive job insurance benefits, an individual must be able to work. Iowa Code section 96.4(3). Not only has Ms. Wilde not been released to work, she cannot at this time return to any of the former jobs she held. As such, she is not able to work within the meaning of the law and is not entitled to job insurance benefits.

**DECISION:**

The representative's decision dated May 19, 2009, reference 01, is hereby affirmed. Ms. Wilde is not entitled to job insurance benefits as she has not been fully released to work. Benefits are withheld until she has been fully released to work and has re-offered her services to the employer, provided no suitable comparable work is available and provided she is otherwise eligible.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

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