

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KEVIN R SMITH**  
Claimant

**APPEAL 17A-UI-06809-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JOHN DEERE CONSTRUCTION  
EQUIPMENT**  
Employer

**OC: 05/28/17  
Claimant: Appellant (1)**

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Iowa Code § 96.6(2) – Timeliness of Appeal  
Iowa Code § 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the June 21, 2017 (reference 02) unemployment insurance decision that found claimant was ineligible for unemployment benefits because he was working enough hours to be considered employed as of May 28, 2017. The parties were properly notified of the hearing. A telephone hearing was held on July 21, 2017. The claimant, Kevin R. Smith, participated. The employer, John Deere Construction Equipment, did not participate. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records including the fact-finding documents.

**ISSUES:**

Is the appeal timely?

Is the claimant able to work and available for work effective May 28, 2017?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The facts in this matter are undisputed. Claimant is employed full-time for this employer. Claimant was laid-off for one week from May 21, 2017 through May 27, 2017. He filed a claim for benefits and a request to backdate his claim to May 21, 2017. The initial request to backdate his claim was denied. Claimant filed an appeal and a decision in his favor allowing his claim to be backdated to May 21, 2017 was granted, as were retroactive benefits for that one-week period. Benefits for the one-week period ending May 27, 2017 were paid to the claimant.

As of May 28, 2017, claimant returned to work full-time and continues to work for the employer full-time as of today's date. Claimant may be laid-off sometime in August of 2017 but is currently employed full-time as of May 28, 2017 to present.

The claimant received the decision that stated that he was working enough hours to be considered employed and was therefore, not available for unemployment benefits as of May 28, 2017. The decision was mailed on June 21, 2017. The decision stated that an appeal must be filed by July 1, 2017, or if that date fell on a Saturday, Sunday, or legal holiday, the appeal period was extended to the next working day. July 1, 2017 fell on a Saturday and the appeal period was extended to the next working day, which was July 3, 2017. Claimant filed his appeal

online on July 6, 2017. Claimant filed his appeal late because he believed that the decision regarding the backdating of his claim resolved all pertinent issues.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant's appeal is not timely.

Iowa Code § 96.6(2) provides in part:

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.

Iowa Code § 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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Code § 96.19(38) provides:

"Total and partial unemployment"

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work, or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Iowa Admin. Code r. 871-24.23(23) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

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. Iowa Code § 96.6(2). In addressing an issue of timeliness of an appeal under that portion of this Code section, the Iowa Supreme Court has held that this statute clearly limits the time to do so, and compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979).

In this case, the claimant did not file a timely appeal because he was confused and believed the outcome of his backdating appeal was the only pertinent issue. The claimant did have the ability to file a timely appeal to the decision dated June 21, 2017 finding that he was working enough hours but did not do so due to his confusion regarding the backdating appeal. As such, the administrative law judge does not have jurisdiction to make any determination regarding this appeal and the appeal is dismissed as untimely.

**However, the initial decision did direct the claimant that if the circumstances change and claimant at some point in time is no longer working enough hours to be considered employed, for example, he is laid-off at a future date, then he would need to contact his local workforce development center and request that the disqualification be removed at that time.**

**DECISION:**

The June 21, 2017 (reference 02) decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

**NOTE TO CLAIMANT:** If the circumstances change and claimant is laid off at a future date so that the availability disqualification can be removed, he should contact his local workforce development center and request that it be removed at that time.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/rvs