

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER R HILLSMAN
Claimant

APPEAL NO. 08A-UI-04398-S2T

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 02/10/08 R: 03
Claimant: Appellant (1-R)**

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

STATEMENT OF THE CASE:

The claimant appealed from the April 25, 2008, reference 09, decision that concluded the claimant was not able and available for work. After hearing notices were mailed to the claimant's last-known address of record, a telephone hearing was held on May 21, 2008. The claimant participated personally. The claimant's sister, Petrina Aikins-Kumi, observed the hearing. Exhibits D-1 and D-2 were admitted into evidence.

ISSUE:

The issue is whether the appeal was filed in a timely manner and, if so, 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 that: The claimant filed for unemployment insurance benefits with an effective date of February 10, 2008. The claimant visited an emergency room at 6:00 a.m. on February 11, 2008, but was released to return to work immediately following her visit. The claimant was able and available to work that day and every day until March 24, 2008. The claimant was hospitalized for dehydration from March 24 through 28, 2008. She was not able and available for work during that period. After March 28, 2008, her physician released her to return to work. She has been able and available for work after March 28, 2008.

A disqualification decision was mailed to claimant's last known address of record on April 25, 2008. She received the decision on May 5, 2008. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by May 5, 2008. The claimant immediately prepared and mailed an appeal at a postal station in a drug store. The appeal was not postmarked until May 6, 2008, which is after the date noticed on the disqualification decision.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the claimant'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, subsection 10, 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 claimant had the opportunity and did appeal the fact-finder's decision on the day the decision was received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant mailed an appeal within the time period allowed by law. Therefore, the appeal shall be accepted as timely.

The next issue is whether the claimant was able and available for work from March 23 through March 29, 2008. The administrative law judge concludes she was not.

871 IAC 24.23(1) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

When an employee is ill and unable to perform work due to that illness, she is considered to be unavailable for work. The claimant was ill and unable to perform work from March 23 through March 29, 2008. She is considered to be unavailable for work from March 23 through March 29, 2008. The claimant is disqualified from receiving unemployment insurance benefits from March 23 through March 29, 2008.

The issue of whether the claimant is overpaid unemployment insurance benefits is remanded for determination.

DECISION:

The representative's April 25, 2008 decision (reference 09) is affirmed. The claimant's appeal is timely. The claimant is disqualified from receiving unemployment insurance benefits from March 23 through March 29, 2008. The issue of whether the claimant is overpaid unemployment insurance benefits is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw/css