

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ADRIAN R MADDOX
Claimant

APPEAL NO. 17A-UI-00606-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOHN DEERE COMPANY
Employer

**OC: 12/18/16
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Adrian Maddox (claimant) appealed a representative's January 4, 2017, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits as of December 18, 2016, after he was separated from work with John Deere Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 8, 2017. The claimant participated personally. The employer participated by Shannon McGee, Labor Relations Representative, and Kate Ferree, Labor Relations Administrator. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the appeal was filed in a timely manner and, if so, whether the claimant is 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 was hired on March 1, 2010, as a full-time production assembler. On or about October 19, 2015, the claimant's physician restricted the claimant from working. The claimant stopped working on October 19, 2015. He has not been released to return to work. He filed for unemployment insurance benefits with an effective date of December 18, 2016.

A disqualification decision was mailed to the claimant's last-known address of record on January 4, 2017. The claimant did not receive the decision within ten days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by January 14, 2017. The appeal was filed on January 19, 2017, the date the claimant received 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 § 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 did not have an opportunity to appeal the fact-finder's decision because the decision was not 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 appeal shall be accepted as timely.

The next issue is whether the claimant is able and available for work as of December 18, 2016. The administrative law judge concludes he is not.

Iowa Admin. Code r. 871-24.23(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, He is considered to be unavailable for work. The claimant has not been released to return to work by his physician. He is considered to be unavailable for work. The claimant is disqualified from receiving

unemployment insurance benefits beginning December 18, 2016, due to his unavailability for work.

DECISION:

The representative's January 4, 2017, decision (reference 01) is affirmed. The appeal in this case was timely. The claimant is disqualified from receiving unemployment insurance benefits beginning December 18, 2016, due to his unavailability for work.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs