

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**KENNETH W BALES**

Claimant

**C & B OPERATIONS LLC**

Employer

**APPEAL 23A-UI-11870-LJ**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/12/23**

**Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

On December 18, 2023, claimant Kenneth W. Bales filed an appeal from the December 8, 2023 (reference 03) unemployment insurance decision that denied benefits effective November 12, 2023, determining claimant was not able to work due to illness. The Unemployment Insurance Appeals Bureau mailed notice of the hearing on December 22, 2023. Administrative Law Judge Elizabeth A. Johnson held an in-person hearing in the Davenport IowaWorks office at 12:00 p.m. on Wednesday, January 3, 2023. Claimant Kenneth W. Bales participated. Veronica Bales, claimant's wife, testified as a witness. Employer C & B Operations, LLC, participated through Melissa Butcher, Regional Human Resources Manager for Iowa. Claimant's Exhibits A and B were received and admitted into the record without objection.

**ISSUES:**

Did the claimant file a timely appeal?  
Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant last worked for C & B Operations as a service technician, diagnosing forklift issues and repairing them. The employer discharged claimant on November 2, 2023. Iowa Workforce Development found claimant eligible for benefits based on that separation.

Claimant received a work release from one of his cancer surgeons on October 17, 2023. This release restricted claimant to lifting no more than ten pounds; to working light duty; and to taking more frequent breaks. Claimant has not gone back to see this doctor again to have the restrictions formally lifted. However, he believes he is ready to perform all the duties of a service technician without restrictions or accommodation. Claimant uses a "lift smarter, not harder" mentality, and he uses proper lifting techniques along with assistive equipment like handcarts and fork trucks to lift safely while working.

Claimant was hospitalized between November 27 and November 30, due to an issue with blood sugar regulation. Aside from that four-day period, claimant has been available for work since

opening his claim for benefits. He has not traveled, vacationed, or attended out-of-town appointments.

Claimant has found sufficient jobs to apply for each week. If service technician positions become limited in the job market, claimant will look to general labor positions. He has struggled opening his IowaWorks account and logging his reemployment contacts so he can file his weekly continued claims.

The unemployment insurance decision was sent to claimant's address of record on December 8, 2023. Veronica Bales specifically recalls placing the appeal letter and accompanying documents in the mail on Saturday, December 16. The appeal postmark is difficult to read: it is unclear whether the envelope was postmarked December 18, 2023 or December 19, 2023. Claimant did not date his appeal letter, either the handwritten letter or the typed two-page statement he included with his supporting documentation.

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

For the reasons that follow, the administrative law judge concludes claimant is able to and available for work. Benefits are allowed, provided he is otherwise eligible.

#### **Did the claimant file a timely appeal?**

I must first address the issue of whether claimant filed a timely appeal. For the reasons set forth below, I find claimant's appeal has been timely filed.

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless 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 Admin. Code r. 871-24.35(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

- (a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

- (b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

- (c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982). Under the administrative rule, when the postmark is illegible, "the date entered on the document as the date of completion" will serve as the date the document was received by and filed with the agency. Iowa Admin. Code. R. 871-24.35(1)(a).

During the hearing, Veronica Bales testified that she took the appeal letter and supporting documents to the post office and mailed them on Saturday, December 16, 2023. While the Perry post office does not process mail on Saturdays, claimant knew it processed mail Mondays through Fridays and so he and Veronica Bales believed the appeal would have been processed and postmarked on Monday, December 18, 2023. Any delay in processing and postmarking the appeal was due to the post office and not claimant's inaction. The appeal shall be accepted as timely.

**Is the claimant able to work and available for work?**

The next issue is whether claimant is able to and available for work. For the reasons set forth below, I find claimant has established his ability to and availability for work.

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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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".

Iowa Admin. Code r. 871-24.22(1) and (2) state:

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.

Iowa Admin. Code r. 871-24.22(2) provides:

Benefit 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23 outlines numerous circumstances in which a claimant will be found unavailable for work and thus disqualified from receiving benefits on a week-by-week basis. The specific reasons named in the rule that are relevant to claimant's situation include:

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

(2) An individual presently in the hospital is deemed not to meet the availability requirements of Iowa Code section 96.4(2) and benefits will be denied until a change in status and the individual can meet the eligibility requirements. Such individual must renew the claim at once if unemployed.

(3) If an individual places restrictions on employability as to the wages and type of work that is acceptable and when considering the length of unemployment, such individual has no reasonable expectancy of securing work, such individual will be deemed not to have met the availability requirements of Iowa Code section 96.4(3).

(18) Where the claimant's availability for work is unduly limited because such claimant is willing to work only in a specific area although suitable work is available in other areas where the claimant is expected to be available for work.

(34) Where the claimant is not able to work due to personal injury.

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

For an unemployed individual to be eligible to receive benefits, she must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The burden is on the claimant to establish that she is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22.

Now that claimant has separated from employment, his ability to work is no longer measured against his former position with C & B Operations. Instead, claimant must establish there is work he is able to perform in the labor market. Here, claimant was released to return to work on October 17, 2023 with a ten-pound lifting restriction and instructions to work light duty and take more frequent breaks. He has been healing and improving since his pancreas was removed, and he has not undergone any additional surgical procedures since that time. His brief hospitalization was for a blood sugar issue, and when he was released he did not receive any restrictions. As an experienced service technician, claimant is certainly qualified to perform both general labor positions and specialized labor positions related to diagnosing and fixing mechanical issues. Claimant has established his ability to work.

As claimant has not filed any weekly claims for benefits since separating from employment, this decision does not address claimant's availability during his hospitalization. That issue is moot.

**DECISION:**

The December 8, 2023 (reference 03) unemployment insurance decision is reversed. Claimant is able to work and available for work. Benefits are allowed, provided he is otherwise eligible.



---

Elizabeth A. Johnson  
Administrative Law Judge

January 10, 2024  
Decision Dated and Mailed

LJ/jkb

**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Iowa Employment Appeal Board  
6200 Park Avenue Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://eab.iowa.gov)**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Iowa Employment Appeal Board  
6200 Park Avenue Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
En línea: [eab.iowa.gov](http://eab.iowa.gov)**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.