

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**DONALD A CARMON**  
Claimant

**PEOPLEREADY INC**  
Employer

**APPEAL 19A-UI-09779-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/14/19**  
**Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions  
Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

On December 10, 2019, Donald A. Carmon (claimant) filed an appeal from the November 22, 2019, reference 05, unemployment insurance decision that denied benefits based upon the determination he was not able to and available for work because he is under a doctor's care. The parties were properly notified about the hearing. A telephone hearing was held on January 8, 2020 and consolidated with the hearing for appeal 19A-UI-09778-SC-T. The claimant participated personally. PeopleReady, Inc. (employer) participated through Phillip Schuller, Branch Manager. The Claimant's Exhibits A through E and the Department's Exhibits D1 through D3 were admitted into the record.

**ISSUES:**

Is the claimant's appeal timely?  
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: The claimant had worked for the employer since June 13, 2018. He has always worked physical jobs either in the food industry or in a forklift operator/warehouse capacity. He was most recently employed in a temporary position working full-time as a General Laborer for the employer's client Millennium Waste beginning on October 21, 2019 and his last day worked was Friday, October 25, 2019.

On Monday, October 28, the claimant did not report for work. On October 29, the claimant notified the employer he had been in the hospital and would not be able to return to work due to knee pain which was the result of a non-work related illness or injury. On November 8, the claimant's doctor restricted him to no repetitive kneeling, squatting, bending, or stooping. He also removed the claimant from work, if light duty or desk work was not available. The claimant does not have experience working at a traditional desk job. Additionally, the claimant does not have regular transportation at this time. The claimant's knee surgery is scheduled for January 14, 2020. The claimant's doctor has not yet released him to return to work without restrictions.

The unemployment insurance decision that denied benefits was mailed to the claimant's address of record on November 22, 2019. He did not receive the decision. The first notice of disqualification was communication with Iowa Workforce Development (IWD) on December 2. The claimant was advised at that time to file an appeal, but was not told the deadline to file was the same day. The appeal was submitted within ten days of the first notice the claimant received of the disqualification.

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

### *I. Is the claimant's appeal timely?*

For the reasons that follow, the administrative law judge concludes the claimant's appeal is timely.

Iowa Code section 96.6(2) provides, in pertinent part:

Filing – determination – appeal.

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

Date of submission and extension of time for payments and notices.

(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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

The claimant did not have an opportunity to appeal the unemployment insurance decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant filed his appeal within a reasonable period of time after discovering the disqualification. Therefore, the appeal shall be accepted as timely.

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

For the reasons that follow, the administrative law judge concludes the claimant is not able to and available for work. Benefits are denied.

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 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 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 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 provides, in relevant part:

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.

...

(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.

...

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

Iowa Admin. Code r. 871-24.23 provides, in relevant part:

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.

...

(4) If the means of transportation by an individual was lost from the individual's residence to the area of the individual's usual employment, the individual will be deemed not to have met the availability requirements of the law. However, an individual shall not be disqualified for restricting employability to the area of usual employment. See subrule 24.24(7).

...

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

...

(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.

An individual claiming benefits has the burden of proof that he is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. The claimant has always worked physical jobs and does not have experience in a traditional desk or office position. The claimant's doctor has removed him from work if he cannot obtain a desk or sitting job. The claimant has not established that he is able to and available for work. Accordingly, benefits are denied.

**DECISION:**

The claimant's appeal is timely. The November 22, 2019, reference 05, unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective November 3, 2019. Benefits are denied.

A handwritten signature in dark ink, appearing to read "Stephanie R. Callahan", with a long horizontal flourish extending to the right.

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Stephanie R. Callahan  
Administrative Law Judge

January 9, 2020  
Decision Dated and Mailed

src/scn