

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**RITA K GRAVES**  
Claimant

**KWIK TRIP INC**  
Employer

**APPEAL 18A-UI-09915-AW-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/19/18**  
**Claimant: Appellant (4)**

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Iowa Code § 96.4(3) – Able and Available  
Iowa Code § 96.6(2) – Timeliness of Appeal  
Iowa Admin Code r. 871-24.22 – Benefit Eligibility Conditions  
Iowa Admin Code r. 871-24.23 – Availability Disqualifications  
Iowa Admin Code r. 871-24.35 – Date of Submission

**STATEMENT OF THE CASE:**

Rita Graves, Claimant, filed an appeal from the September 18, 2018, (reference 03) unemployment insurance decision that denied benefits because claimant was not able to perform work due to injury. The parties were properly notified of the hearing. A telephone hearing was held on October 12, 2018 at 9:00 a.m. Claimant participated. Employer participated through James Ohrt, Store Leader. Claimant's Exhibits A and B were admitted.

**ISSUES:**

Whether Claimant's appeal was timely.  
Whether Claimant is able to work.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to claimant at the correct address on September 18, 2018. Claimant received the decision on September 21, 2018 or September 22, 2018. (Claimant Testimony) Claimant drafted and signed an appeal letter and emailed it to Iowa Workforce Development on September 28, 2018. (Claimant Testimony)

Between the original claim date and August 27, 2018, claimant was restricted from working by her physician. (Claimant Testimony) On August 27, 2018, claimant was released by her physician to return to work with the restriction of not using her right arm. (Claimant Testimony; Ohrt Testimony) Even without the use of her right arm, claimant could perform the duties of a cashier, cleaning person, and secretary. (Claimant Testimony) Claimant applied for jobs as a secretary and filing clerk – jobs for which she had some experience. (Claimant Testimony) On September 1, 2018, claimant returned to work for employer part-time (12 – 25 hours per week) and within her restrictions. (Claimant Testimony) On September 25, 2018, Claimant was released to use her right arm with a five pound weight limit. (Exhibit B)

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely and that claimant has been able to work since August 27, 2018.

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, subsections 10 and 11, 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. (emphasis added)

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:

(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 record in this case shows that more than ten calendar days elapsed between the date the decision was mailed to claimant and the date the appeals bureau received claimant's appeal.

Claimant emailed her appeal to the claim's department's email address instead of the appeal's department's email address based upon direction claimant received from an Iowa Workforce Development employee. (Claimant Testimony) The administrative law judge concludes that the delay in receipt of claimant's appeal by the appeals bureau was due to an agency error or misinformation. The administrative law judge further concludes that claimant's appeal was timely.

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 . . . [t]he individual is able to work, is available for work, and is earnestly and actively seeking work."

Iowa Admin Code r. 871-24.22 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.

(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.

(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(35) provides:

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

(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.

Claimant has established that she has been able to work since released by her physician on August 27, 2018. The restriction that claimant not use her right arm was not a barrier to her employment as shown by her return to work for employer on September 1, 2018. Without the use of her right arm, claimant was able to assist customers, run a register and stock shelves. (Ohrt Testimony) Claimant's restriction was modified on September 25, 2018 to allow her to use her right arm with a weight restriction. If claimant was able to work with a total restriction on the use of her right arm, then she could certainly work with a weight restriction on that arm. Claimant identified and has applied for other jobs that she can perform within her current restriction. Claimant has been able to work since August 27, 2018.

**DECISION:**

The September 18, 2018, (reference 03) unemployment insurance decision is modified in favor of the appellant. Benefits are allowed effective August 27, 2018, provided claimant is otherwise eligible.

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Adrienne C. Williamson  
Administrative Law Judge  
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Decision Dated and Mailed

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