

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MICHAEL J JELINSKE**  
Claimant

**APPEAL 18A-UI-04658-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 02/26/17  
Claimant: Appellant (1)**

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Iowa Code § 96.6(2) – Timeliness of Appeal  
Iowa Code § 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the September 15, 2017 (reference 07) unemployment insurance decision that found claimant was ineligible for unemployment benefits from August 13, 2017 through August 19, 2017 because he was on vacation. The claimant was properly notified of the hearing. A telephone hearing was held on May 9, 2018. The claimant participated. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records including the audio recording and decision from Appeal 17A-UI-05101-H2-T.

**ISSUES:**

Did the claimant file a timely appeal?

Was the claimant able to work and available for work from August 13, 2017 through August 19, 2017?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

A decision dated September 15, 2017 (reference 07) found that the claimant was not available for work due to being on vacation from August 13, 2017 through August 19, 2017. Claimant never received a copy of the decision in the mail. Claimant received a decision regarding overpayment of benefits after the disqualification decision that found him not available for work and filed an appeal on April 18, 2018 to both decisions.

Claimant was on vacation from Sunday, August 13, 2017 through Sunday, August 19, 2017 in Cincinnati, Ohio watching a tennis tournament. Claimant had an appeal hearing in case 17A-UI-05101-H2-T scheduled for 10:00 a.m. on Thursday, August 17, 2017 and he emailed a request to the Appeals Bureau seeking a postponement of the hearing because he would be in a loud arena at 10:00 a.m. on August 17, 2017 watching tennis. The postponement request was granted and the hearing for appeal 17A-UI-05101-H2-T was held at a later date and time.

During the appeal hearing for 17A-UI-05101-H2-T, claimant testified that he was on vacation driving to Ohio and then back to Iowa from Sunday, August 13, 2017 through Sunday,

August 19, 2017. Following the appeal hearing for 17A-UI-05101-H2-T, the issue of whether the claimant was able to and available for work for the one-week period ending August 19, 2017 was remanded to the Benefits Bureau for an initial investigation and decision on whether the claimant was able to and available for work from August 13, 2017 through August 19, 2017. The Benefits Bureau issued the decision dated September 15, 2017 (reference 07) that denied claimant benefits for that one-week period, to which claimant filed an appeal on April 18, 2018.

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

For the reasons that follow, the administrative law judge concludes as follows:

The first issue is whether the claimant filed a timely appeal. The administrative law judge finds that the claimant did file a timely appeal.

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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 96.8, subsection 5.

An appeal must be filed within ten days after notification of that decision was mailed. Iowa Code § 96.6(2). The Iowa Supreme Court held that compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979). In this case, the claimant never received a copy of the September 15, 2017 (reference 07) decision. As such, his appeal shall be considered timely.

The next issue is whether the claimant was able to and available for work from August 13, 2017 through August 19, 2017. The administrative law judge finds that the claimant was not available for work for the one-week period ending August 19, 2017 due to being out of town for the majority of the week for personal reasons and not in the labor market.

Iowa Admin. Code r. 871-24.23(25) provides:

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

(25) If the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market.

Claimant testified under oath during the appeal hearing for 17A-UI-05101-H2-T that he was out of town for personal reasons from Sunday, August 13, 2017, through Sunday, August 19, 2017. Claimant testified during the hearing on this matter that he was only out of town from Thursday, August 17, 2017 through Sunday, August 19, 2017. During claimant's testimony for the hearing on this matter, he could not recall the time that he left Iowa to travel to Ohio, whether or not he attended the tennis tournament in the morning or afternoon, and what time he returned to Iowa. During the appeal hearing for 17A-UI-05101-H2-T, claimant was quite clear in his testimony that he was travelling to Ohio, attending the tennis tournament, then traveling back to Iowa for the entire week, Sunday, August 13, 2017 through Sunday, August 19, 2017. I find claimant's testimony during the appeal hearing for 17A-UI-05101-H2-T more credible than claimant's testimony for the hearing in this matter.

Claimant was out of town for personal reasons during the entire workweek from August 13, 2017 through August 19, 2017, and was not in the labor market. As such, he did not meet the availability requirements of the law. Benefits are denied for the one-week period ending August 19, 2017.

**DECISION:**

The claimant filed a timely appeal. The September 15, 2017 (reference 07) decision is affirmed. Claimant is not eligible to receive benefits from August 13, 2017 through August 19, 2017 due to being out of town for personal reasons the entire workweek and not available for work. Benefits are denied for the one-week period ending August 19, 2017.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/rvs