

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**PHYLLIS A MCKEE**  
Claimant

**APPEAL 18A-UI-09416-AW-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AREA RESIDENTIAL CARE INC**  
Employer

**OC: 08/05/18  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Phyllis McKee, Claimant, filed an appeal from the August 30, 2018, (reference 03) unemployment insurance decision that denied benefits because she was not able to perform work as of August 5, 2018. The parties were properly notified of the hearing. A telephone hearing was held on September 27, 2018 at 9:00 a.m. Claimant participated. Employer participated through Amy Gullikson, Human Resources Director. Official notice was taken of the department's file, including the appeal form. Claimant's Exhibit A was admitted.

**ISSUES:**

Whether claimant's appeal was filed timely.  
Whether claimant is able to and available for 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 her correct address on August 30, 2018. Claimant does not recall when she received the decision in the mail; however, claimant receives mail from Des Moines, Iowa in four days and checks her mail daily. (Claimant Testimony) The decision states: "This decision becomes final unless an appeal is postmarked by 09/09/18, or received by Iowa Workforce Development Appeal Section by that date. If this date falls on a Saturday, Sunday, or a Legal Holiday, the appeal period is extended to the next working day." September 9, 2018 was a Sunday. Claimant signed the appeal form on September 10, 2018. The appeal form was received by the Appeals Bureau on September 11, 2018, without the envelope in which it was mailed.

Per a physician's statement dated July 20, 2018, claimant has a permanent lifting restriction of ten pounds. (Exhibit A) In addition, claimant has issues with her balance and stability in walking. (Claimant Testimony)

## REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.6(2) provides: "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(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 by 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, then 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.

Claimant reports that she signed the appeal form on August 10, 2018 and mailed it to the Appeals Bureau. The appeal form was received by the Appeals Bureau on September 11, 2018. It is doubtful that the appeal arrived in Des Moines, Iowa from Dubuque, Iowa in one day – especially in light of claimant's testimony regarding the length of time it takes her to receive mail from Des Moines, Iowa; this makes the method of submission questionable. However, without any other evidence of the method of submission or the envelope in which the appeal form was received, "the date entered on the document as the date of completion" must be used to determine if claimant's appeal was timely. The date of completion is September 10, 2018, which was the due date. Claimant's appeal is timely.

For the reasons that follow, the administrative law judge concludes the claimant is not able to and available for work since August 5, 2018. 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 . . . [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(1)(a), (2) provides:

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.

(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.

The claimant has the burden of proof to establish his or her ability to and availability for work. *Davoren v. Iowa Emp't Sec. Comm'n*, 277 N.W.2d 602 (Iowa 1979). To be able to work, "[a]n 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." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). Claimant testified that there are no jobs that she is able to perform. Therefore, claimant is not able to work.

**DECISION:**

The August 30, 2018, (reference 03) unemployment insurance decision is affirmed. Benefits are denied and are withheld until such time as the claimant demonstrates that she is able to and available for work and is actively seeking work.

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Adrienne C. Williamson  
Administrative Law Judge  
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Decision Dated and Mailed

acw/rvs