

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**JENNIFER E CRAWFORD**  
Claimant

**APPEAL NO: 17A-UI-10822-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MANPOWER INTERNATIONAL INC**  
Employer

**OC: 07/23/17**  
**Claimant: Appellant (2)**

Iowa Code section 96.5(1)d – Voluntary Leaving/Illness or Injury  
871 IAC 24.26(6) – Separation Due to Illness or Injury  
Iowa Code section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 17, 2017, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 8, 2017. The claimant participated in the hearing. The employer did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Department's Exhibit D-1 was admitted into evidence.

**ISSUE:**

The issues are whether the claimant's appeal is timely and whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's last known address of record on August 17, 2017. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by August 27, 2017. That date fell on a Sunday so the appeal was actually due August 28, 2017. The appeal was not filed until October 23, 2017, which is after the date noticed on the disqualification decision. The claimant went to a friend's house to use her computer to file her appeal August 23, 2017, and thought it went through because she did not receive an error message. When she realized her appeal was not filed she sent another appeal October 23, 2017. Under these circumstances, the administrative law judge concludes the claimant's appeal is timely.

The claimant was employed as a part-time administrative assistant for Manpower International last assigned to Insurance Auto Auction from September 14, 2016 to May 30, 2017. She had knee replacement surgery May 31, 2017, and was unable to work pursuant to medical advice from a treating physician. On June 23, 2017, the employer left the claimant a message stating that her position was filled and her services were no longer needed. Upon the full medical

release by her physician, the claimant returned and offered her services July 26, 2017, but no work was available.

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

For the reasons that follow, the administrative law judge concludes no work was available to the claimant upon her release to return to work from a non-work related injury.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Code section 96.5(1)d provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

871 IAC 24.26(6)b provides:

(6) Separation because of illness, injury, or pregnancy.

b. Non-employment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

The claimant's return to the employer to offer services after the medical recovery evinces an intention to continue working. Therefore, the separation was attributable to a lack of work by the employer. Benefits are allowed.

**DECISION:**

The August 17, 2017, reference 01, decision is reversed. The claimant's appeal is timely. The claimant was laid off due to a lack of work. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/rvs