

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**WILLIE J ALFORD**  
Claimant

**OSMOSE UTILITIES SERVICES INC**  
Employer

**APPEAL 17A-UI-06280-JCT**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/04/16**  
**Claimant: Appellant (4R)**

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Iowa Code § 96.6(2) – Timeliness of Appeal  
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 Admin. Code r. 871-24.22(1) - Able to Work – illness or injury

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the May 19, 2017, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 7, 2017. The claimant participated personally. The employer did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. Department Exhibits D-1 and D-2 were received into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents and KCCO. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Is the appeal timely?  
Is the claimant able to work and available for work effective April 16, 2017?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: An initial unemployment insurance decision of ineligibility decision was mailed to the claimant's last known address of record on May 19, 2017. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by May 29, 2017. Because May 29, 2017 was a holiday, the final day to appeal was extended to May 30, 2017.

The claimant has lived at the address of record for one year and shares the mail with four other people. He generally does not check his mail unless it is from his employer. The claimant was out of town from May 24 through 29, 2017 for his daughter's graduation, which coincided with the period to appeal. The claimant denied receipt of the initial decision denying him benefits on the basis of not meeting the availability requirements. The administrative record (KCCO) reflects

the claimant discontinued making his weekly continued claims the week after the decision was mailed, even though there was no change in his job status and he denied receipt of the May 19, 2017 decision.

According to the claimant, his debit card containing his unemployment insurance benefits was denied, which triggered his inquiry of benefits not being paid. The claimant also denied receipt of the reference 03 initial decision dated May 25, 2017, which established an overpayment of benefits. The claimant does not know when the card was denied, or when he made two efforts to contact Iowa Workforce Development. Specific details were not provided on the calls to IWD or any guidance offered. However, the claimant then received a notice of overpayment, dated June 16, 2017, and filed his appeal online effective June 20, 2017 (Department Exhibit D-1).

The claimant last performed work for this employer on April 12, 2017. He was temporarily laid off and work resumed on April 17, 2017. The work beginning April 17, 2017 was in Ohio, and the claimant could not go because he had a scheduled doctor's appointment on April 19, 2017. The reason for the appointment was personal and not work-related. While at his visit, a lump was found so the claimant had to return back to the doctor again, and then had surgery on May 5, 2017. The claimant was released to return to work on June 9, 2017 without restrictions by his treating physician.

The claimant is unable to join the job assignment in Ohio because he does not have transportation or a car and usually rides with the foreman. The claimant has no other restrictions to employability. The claimant asserted that he is unsure if he is temporary unemployed or has permanently separated from employment. Because the employer did not participate in the hearing, the claimant's status could not be confirmed.

#### **REASONINGS AND CONCLUSIONS OF LAW:**

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is.

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 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, subsection 10, 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.

In this case, the claimant denied receipt of the initial decision dated May 19, 2017, which found him ineligible to receive benefits effective April 16, 2017. The claimant stated the first documentation he received from IWD alerting him was the statement of overpayment dated June 16, 2017. The appellant did not have an opportunity to appeal the fact-finder's 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 then filed his appeal online on June 20, 2017. The claimant filed an appeal within a reasonable period of time after discovering the disqualification. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes the claimant is not able to and available for work from April 16, 2017 through June 8, 2017.

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:

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(1)a 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. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

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 physician and has not been released as being able to work.

In this case, the claimant did not perform work between April 16 and June 8, 2017, because he had a doctor's appointment on April 19, 2017, which resulted in surgery on May 5, 2017. He was not released to work without restrictions until June 9, 2017. Inasmuch as the medical condition was not work-related, the administrative law judge concludes the claimant was not able to and available for work April 16 and June 8, 2017. Benefits are denied for that period only.

The claimant has not established any other restrictions to employability and is deemed to meet the availability requirements beginning June 9, 2017. Benefits are allowed June 9, 2017 provided he is otherwise eligible.

**DECISION:**

The May 19, 2017, (reference 02) decision is modified in favor of the claimant/appellant. The appeal is timely. The claimant was not able to and available for work April 16, 2017 through June 8, 2017. Benefits are denied for this period. The claimant is able and available for work effective June 9, 2017, and benefits are allowed, provided he is otherwise eligible.

**REMAND:** The issue of whether the claimant has permanently separated from employment is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

jlb/scn