

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RANDY HOHENFIELD
Claimant

APPEAL NO: 13A-UI-12387-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 09/08/13
Claimant: Appellant (1)

Iowa Code § 96.4-3 - Able and Available for Work
Iowa Code § 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

Randy Hohenfield (claimant) appealed an unemployment insurance decision dated October 17, 2013, reference 01, which held that he was not eligible for unemployment insurance benefits because he is not medically able to work. After a hearing notice was mailed to the party's last-known address of record, a telephone hearing was held on November 27, 2013. The claimant participated in the hearing. Department Exhibit One and Claimant's Exhibit A were admitted into evidence.

ISSUE:

The issue is whether the claimant filed a timely appeal or established a legal excuse for filing a late appeal, and if so, whether he is able and available to work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: A disqualification decision was mailed to the claimant's last-known address of record on October 17, 2013. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by October 27, 2013. The appeal was not filed until November 5, 2013, which is after the date noticed on the disqualification decision. Mason City Workforce Advisor Larry Faber wrote the appeal and reported that he faxed an appeal to the disqualification decision on or about October 19, 2013.

The claimant is still attached to the employer but was diagnosed with terminal lung cancer in August 2013. He is going through chemotherapy and could not work after that because of intense pain and nausea. His physician reports that he can work as much as he can tolerate. However, the claimant cannot work because of the pain. He becomes violently sick in the mornings and wants to get things under control before he tries to go back to work. He is

thinking of maybe going back to work for a “few hours here and there” but cannot work a full eight hours. The claimant testified that, “Unemployment should understand that people have a problem and can’t work or sometimes they can work” but he believes the Agency should have a little sympathy.

REASONING AND CONCLUSIONS OF LAW:

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party’s last-known address. Iowa Code § 96.6-2. The unemployment insurance rules provide that if the failure to file a timely appeal was due to any Agency error or misinformation or delay or other action of the United States Postal Service, it would be considered timely. 871 IAC 24.35(2). Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973).

In the case herein, the appeal was not timely filed but a Workforce Representative reported that an appeal had been filed in a timely manner. Therefore, the appeal shall be accepted as timely.

The substantive issue to be determined in this case is whether the claimant is able and available for work. In order for an individual to be eligible to receive unemployment insurance benefits, the evidence in the record must establish that he is able to work, available for work, and earnestly and actively seeking work. See Iowa Code §96.4(3) and 871 IAC 24.22. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but that which is engaged in by others as a means of livelihood. 871 IAC 24.22(1).

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). While the claimant's physician has reported he can work as much as he can tolerate, the evidence establishes that he is currently unable to work. While the claimant's situation is compelling, an administrative law judge's duty is to apply the law not disregard it to achieve a desirable result. The claimant has not met his burden of proof of basic eligibility and benefits are denied.

DECISION:

The claimant's appeal is timely. The unemployment insurance decision dated October 17, 2013, reference 01, is affirmed. Benefits are denied since the claimant does not meet the availability requirements of the law.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs