

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SENAD LATIC
Claimant

APPEAL NO. 07A-UI-10755-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 09/30/07 R: 03
Claimant: Appellant (1)**

Section 96.4-3 - Able to and Available for Work
Section 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated November 6, 2007, reference 01, that concluded he was not able to and available for work. A telephone hearing was held on December 11, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing with the assistance of and interpreter, Zijo Sucaska. No one participated in the hearing on behalf of the employer.

ISSUES:

Did the claimant file his appeal on time?
Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant worked as a production worker from March 3, 1998, to September 26, 2007. He stopped working due to work-related problems with his right leg and arm. He received workers' compensation benefits for about a month but was cut off for some reason. He is considered to be on a leave of absence from the employer until he is released to return to work. Since he filed for unemployment insurance benefits, the claimant has been unable to work due to medical problems. He has not been released to work by his doctor.

An unemployment insurance decision was mailed to the claimant's correct address on November 6, 2007. The decision concluded he was not able to and available for work and stated that an appeal needed to be filed by November 16, 2007.

The claimant went to the Workforce Development Center in Waterloo to file an appeal of the decision. The claimant, however, has limited English skills and had difficulty explaining to the representative what he wanted. He left the office believing that he had filed his appeal, but later found out that no appeal was filed. He filed his appeal on November 21, 2007, after he had received a decision that stated he was overpaid benefits.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant filed a timely appeal. Iowa Code section 96.6-2 provides that an unemployment insurance decision becomes final if the decision is not appealed within ten days after the decision was mailed to the claimant. The rules, however, state that a late appeal is excused if the appeal is filed late due to an agency error. 871 IAC 24.35(2). In this case, the claimant went to the office to appeal, but because the agency did not get an interpreter to determine what the claimant wanted, no appeal was filed. The appeal in this case is considered timely.

The unemployment insurance rules provide that a person must be physically able to work, not necessarily in the individual's customary occupation, but in some reasonably suitable, comparable, gainful, full-time endeavor that is generally available in the labor market. 871 IAC 24.22(1)b. The claimant is not eligible for benefits because based on his own testimony, he is currently unable to work.

If circumstances change, the claimant should reapply for benefits and show that he is able to work.

DECISION:

The unemployment insurance decision dated November 6, 2007, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he reapplies for benefits and shows that he is able to and available for work.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs