

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**AMBRA M HOYT**  
Claimant

**RGIS LLC**  
Employer

**APPEAL 16A-UI-13732-NM-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/23/16**  
**Claimant: Appellant (2)**

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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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the December 13, 2016, (reference 02) unemployment insurance decision that denied benefits based upon its determination that she was not able to perform work due to an injury. The parties were properly notified of the hearing. A telephone hearing was held on January 19, 2017. The claimant Ambra Hoyt participated and testified. The employer RGIS LLC did not participate. Claimant's Exhibit A and Department's Exhibit D-1 were received into evidence.

**ISSUES:**

Is the appeal timely?

Is the claimant able to work and available for work effective November 6, 2016?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The unemployment insurance decision was mailed to the appellant's address of record on December 13, 2016. Claimant received the notice on or around December 19, 2016 and went to her local Iowa Workforce Development Office with questions about submitting additional evidence to the fact-finder. Claimant was then directed to the customer service line. The customer service representative claimant spoke with on December 19 advised claimant to fax the additional documentation to the fact-finder and everything would be okay. One week later, on December 27, 2016, claimant spoke with another customer service representative who advised her that she actually needed to submit an appeal of the fact-find decision, rather than giving new information to the fact-finder. Claimant's appeal was received the following day.

The claimant was employed as a part-time inventory specialist from April 2015 until she was laid off due to lack of work the last week of October 2016. While claimant was laid off she injured herself when she pinched a nerve. Claimant submitted a doctor's note indicating she was

unable to work due to injury on November 11 and 12, 2016, but releasing to her to thereafter return to work without restriction. (Exhibit A). Claimant testified she has been able and available to work since being released by her doctor.

**REASONING 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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 96.8, subsection 5.

The claimant's failure to file an appeal within the appeal period was solely because of incorrect information received from an IWD customer service advisor. Claimant found out about this misinformation on December 27, 2016 and immediately filed her appeal, which was received the following day. This delay was prompted by and perpetuated by the agency. See, Iowa Admin. Code r. 871-24.35(2). Therefore, the appeal shall be accepted as timely.

The next issue to be decided is whether the claimant was able to and available for work. For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work effective October 23, 2016.

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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 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.

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). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723. The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

Inasmuch as the treating physician has indicated claimant was only unable to work two days out of the entire work week and thereafter released her to return to work without restriction, she has established her ability to work. The physician's note serves as prima facie evidence that claimant is able to work. Accordingly, benefits are allowed.

**DECISION:**

The claimant's appeal is timely. The December 13, 2015, (reference 02) unemployment insurance decision is reversed. The claimant is able to work and available for work effective October 23, 2016. Benefits are allowed, provided she is otherwise eligible.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

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