

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STACEY A WILLIS

Claimant

APPEAL NO. 11A-UI-13420-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACKERMAN INVESTMENT COMPANY

Employer

OC: 08/28/11

Claimant: Appellant (1)

Section 96.4-3 – Able and Available

Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Stacey Willis (claimant) appealed a representative's September 28, 2011 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was still employed with Ackerman Investment Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 2, 2011. The claimant provided a telephone number for the hearing and the administrative law judge dialed the number. The administrative law judge left a message for the claimant, the claimant did not return the administrative law judge's call, and, therefore, did not participate. The employer was represented by Greg Bocken, in-house counsel, and participated by Joe Jordison, general manager. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the appeal was filed in a timely manner and, if so, whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on December 20, 2010, as a part-time housekeeper. The claimant filed for unemployment insurance benefits with an effective date of September 28, 2011. She worked through September 20, 2011. The claimant told the front desk agent that she did not want to work for the employer any longer and quit. Continued work was available had the claimant not resigned.

A disqualification decision was mailed to claimant's last known address of record on September 28, 2011. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by October 8, 2011, a Saturday. October 10, 2011, was a United States Postal holiday. The appeal was filed on October 11, 2011.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 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.

The claimant appealed within the time period allowed by law. Therefore, the appeal shall be accepted as timely.

The next issue is whether the claimant was working part-time at the time she filed for unemployment insurance benefits. The administrative law judge concludes she was.

871 IAC 24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

The claimant was hired as a part-time worker and was still working part-time for the employer through September 20, 2011. She was still employed in a part-time position as was agreed to

at the time she was hired. The claimant is disqualified from receiving unemployment insurance benefits on August 28, 2011, because she was still employed in a part-time position as was agreed to at the time she was hired.

DECISION:

The September 28, 2011, reference 01, decision is affirmed. The appeal in this case was timely. The claimant is disqualified from receiving unemployment insurance benefits on August 28, 2011, because she was still employed in a part-time position as was agreed to at the time she was hired.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw