

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

EMMA L VIER
Claimant

APPEAL 17A-UI-08233-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 05/21/17
Claimant: Appellant (4)**

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 July 19, 2017, (reference 04), unemployment insurance decision that denied benefits based upon claimant's availability for work. After due notice was issued, a telephone conference hearing was scheduled to be held on August 29, 2017. Claimant participated.

ISSUES:

Is the appeal timely?
Is the claimant able to work and available for work effective June 25, 2017?

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 July 19, 2017. The appellant did not receive the decision. Claimant first became aware of the decision on August 11, 2017, when she called the agency to ask about nonpayment of benefits. Claimant was informed of the decision and filed an appeal on August 14, 2017.

Claimant was visiting family on the East Coast from June 26, 2017, through July 9, 2017. She returned to Iowa on July 9, 2017, and was available for work from that point forward.

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, in pertinent part:

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. . . . 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.

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 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 further concludes that the claimant is not able to work and available for work from June 26 through July 9, 2017.

Iowa Code section 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. 871-24.23(25) provides:

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

(25) If the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market.

Since claimant was out of town for personal reasons and outside of the labor market during the two weeks ending July 8, 2017, she is not considered able and available and is not eligible for benefits during those weeks. Claimant returned to the area on July 9, 2017, and is considered available for work effective July 9, 2017.

DECISION:

The July 19, 2017, (reference 04) unemployment insurance decision is modified in favor of appellant. The appeal is timely. The claimant is not able to work and available for work from June 26 through July 9, 2017. Benefits are denied during that time period. Claimant is able and available for work effective July 9, 2017, and benefits are allowed from that date going forward, provided claimant is otherwise eligible.

Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

Decision Dated and Mailed

cal/scn