

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DIANNE M ESTES**

Claimant

**APPEAL NO. 09A-UI-01713-MT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE SPORT SHOP INC**

Employer

**OC: 12/23/07 R: 04  
Claimant: Appellant (2)**

Section 96.4-3 – Able and Available  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated October 7, 2008, reference 01, which held claimant not able and available for work. After due notice, a telephone conference hearing was scheduled for and held on February 24, 2009. Claimant participated personally. Employer failed to respond to the hearing notice and did not participate. Exhibit A was admitted into evidence.

**ISSUES:**

The issues in this matter are whether claimant is able and available for work and whether the appeal is timely.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: Claimant did not receive a copy of the adverse decision dated October 7, 2008. Claimant appealed immediately when she received the corresponding overpayment decision.

Claimant was laid off the week ending October 2, 2008. The business closed for a week due to a community event. Claimant was willing to work, but no work was available.

**REASONING AND CONCLUSIONS OF LAW:**

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.

Claimant's appeal is timely, as claimant did not receive the adverse decision dated October 7, 2008. Claimant appealed on the first notice of an adverse decision, the overpayment dated January 21, 2009.

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".

Benefits shall be allowed effective the week ending August 2, 2008, as claimant was on temporary layoff and was willing to work.

**DECISION:**

The decision of the representative dated October 7, 2008, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, effective August 2, 2008, provided claimant meets all other eligibility requirements. Claimant's appeal is timely.

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Marlon Mormann  
Administrative Law Judge

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Decision Dated and Mailed

mdm/kjw