

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LISA A BLAESS
Claimant

APPEAL 16A-UI-08861-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEED SAVERS EXCHANGE INC
Employer

**OC: 05/29/16
Claimant: Appellant (1)**

Iowa Code § 96.6(2) - Timeliness of Appeal
Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 11, 2016, (reference 01) unemployment insurance decision that denied benefits based upon claimant's unavailability for work. The parties were properly notified about the hearing. A telephone hearing was held on September 1, 2016. Claimant participated. Employer participated through seedhouse manager Tom Wahlberg. Accounting manager Lynne Rilling observed. Department Exhibit 1 was received.

ISSUES:

Is the appeal timely?
Is the claimant able to and available for work?

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 11, 2016. The appellant received the decision within the appeal period. Claimant took the decision to the local IWD office and spoke with an IWD employee. Claimant informed the IWD employee she did not wish to appeal the decision. The IWD employee informed claimant she would probably be receiving an overpayment decision based on the July 11, 2016 (reference 01) decision, and that she could appeal the overpayment decision if she wished to do so. The IWD employee did not inform claimant that she could not prevail on the appeal of the overpayment decision unless she successfully appealed the July 11, 2016 (reference 01) decision. Thus, claimant elected not to appeal the July 11, 2016 (reference 01) decision, but did timely appeal the later issued August 8, 2016 (reference 02) decision that found her overpaid benefits.

Claimant is not available for work during the summer because she has childcare obligations. Claimant can work during the school year. Claimant started working again on August 24, 2016.

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 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's delay in filing the appeal 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 is whether claimant is able to and available to work. For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective May 29, 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(2) 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor

market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Here, claimant was not available for work effective May 29, 2016, due to childcare obligations. While the care claimant provides for her son is admirable, she is not eligible to receive unemployment benefits during weeks she is not willing, able, and ready to accept suitable work.

DECISION:

The July 11, 2016, (reference 01) unemployment insurance decision is affirmed. The appeal is timely. The claimant is not able to work and available for work effective May 29, 2016. Benefits are denied.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

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