

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAREN H JONES
Claimant

APPEAL NO. 16A-UI-10767-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KINSETH HOTEL CORPORATION
Employer

OC: 07/03/16
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Able and Available
871 IAC 24.23(26) – Part-Time Worker – Able and Available
Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Karen Jones (claimant) appealed a representative's July 29, 2016, decision (reference 03) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with Kinseth Hotel Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 18, 2016. The claimant participated personally. The employer was represented by Todd Richardson, Hearing Representative, and participated by Lawrence Thompson, General Manager. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the appeal was filed in a timely manner. If so, whether the claimant is partially unemployed and the employer is relieved of benefit charges.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on May 13, 2013, and at the end of her employment she was working as a part-time housekeeper. The claimant worked full-time for Aladdin Food Management from February 2016, to July 4, 2016. She filed for unemployment insurance benefits with an effective date of July 3, 2016. In her base period of employment she has one quarter of wages from Aladdin Food Management and part-time wages from the employer. She has no other wages in her base period history.

A disqualification decision was mailed to the claimant's last-known address of record on July 29, 2016. She did receive the decision within ten days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by August 8, 2016. The claimant filed an on-line appeal on August 6, 2016. When she realized it did not go through, she filed on-line again on August 28, 2016. On October 1, 2016, the claimant realized that neither appeals were received. The mailed appeal was not filed until October 4, 2016, which is after the date noticed on the disqualification decision.

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 § 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 attempted and thought she appealed within the time period allowed by law. Therefore, the appeal shall be accepted as timely.

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 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(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 is still working part-time for the employer. There has been no change to her hours. The claimant is disqualified from receiving unemployment insurance benefits because she was not available for work during her employment.

DECISION:

The representative's July 29, 2016, decision (reference 03) is affirmed. The appeal in this case was timely. The claimant is disqualified from receiving unemployment insurance benefits.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs