

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CYNTHIA S LEININGER
Claimant

APPEAL NO: 20A-UI-01746-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 10/13/19
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 6, 2020, reference 03, decision that determined she was not able and available for work and denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 13, 2020. The claimant participated in the hearing. Department's Exhibit D-1 was admitted into evidence.

ISSUE:

The issues are whether the claimant's appeal is timely and whether she is able and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's last known address of record on February 6, 2020. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by February 17, 2020. The appeal was not filed until February 25, 2020, which is after the date noticed on the disqualification decision. The claimant was communicating with the Department about hitting the wrong button on her phone when she made her claim and did not understand she needed to appeal the decision until told to do so by a representative of the Department February 25, 2020 at which time she filed her appeal. Under these circumstances, the administrative law judge finds the claimant's appeal is timely.

The claimant filed for benefits with an effective date of October 13, 2019. When filing her claim for the week ending January 18, 2020, she hit the wrong button when answering a question about whether she was able and available for work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work.

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".

The claimant hit the wrong button on her phone when calling in her claim for the week ending January 18, 2020, when answering a question regarding whether she was able and available for work. The claimant was able and available for work that week. Accordingly, the claimant is considered able and available for work and benefits are allowed.

DECISION:

The February 6, 2020, reference 03, decision is reversed. The claimant's appeal is timely. The claimant is able to work and available for work effective the week ending January 18, 2020. Benefits are allowed effective the week ending January 18, 2020.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn