

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**DAWN ROWLAND**  
Claimant

**APPEAL NO: 14A-UI-02666-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AVENTURE STAFFING & PROFESSIONAL**  
Employer

**OC: 12/16/12**  
**Claimant: Appellant (1)**

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Iowa Code § 96.4-3 - Able and Available for Work  
Iowa Code § 96.6-2 - Timeliness of Appeal

**STATEMENT OF THE CASE:**

Dawn Rowland (claimant) appealed an unemployment insurance decision dated January 8, 2014, (reference 02), which held that she was not eligible for unemployment insurance benefits because she was working too many hours with Aventure Staffing & Professional (employer) to be considered able and available for work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 1, 2014. The claimant participated in the hearing. The employer participated through Deb Miller, Human Resources Assistant. Exhibit D-1 and Claimant's Exhibit A were admitted into evidence.

**ISSUE:**

The issue is whether the claimant filed a timely appeal or established a legal excuse for filing a late appeal, and if so, whether she meets the availability requirements of the law.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: A disqualification decision was mailed to the claimant's last-known address of record on January 8, 2014. The claimant did not receive the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by January 18, 2014. The appeal was not filed until March 10, 2014, which is after the date noticed on the disqualification decision.

The claimant began working full-time hours for the employer on Wednesday August 28, 2013, and was assigned to Campaign Headquarters in Brooklyn. Except for the first week, the claimant worked 40 hours each week until she voluntarily quit on October 18, 2013. At that time, she began working for Corporate Resources but continued in her assignment at Campaign Headquarters. The claimant does go to school part of the time. She contends she is available for other work.

**REASONING AND CONCLUSIONS OF LAW:**

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last-known address. Iowa Code § 96.6-2. The unemployment insurance rules provide that if the failure to file a timely appeal was due to any Agency error or misinformation or delay or other action of the United States Postal Service, it would be considered timely. 871 IAC 24.35(2). Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973).

In the case herein, the appeal was not timely filed but the claimant did not receive the decision within the ten-day time period allowed for the appeal. She did file an appeal immediately upon receiving information she had been disqualified. Therefore, the appeal shall be accepted as timely.

The substantive issue to be determined in this case is whether the claimant meets the availability requirements of the law. The claimant has the burden of proof in establishing her ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979).

To be eligible for unemployment insurance benefits, the claimant must remain available for work on the same basis as when she was previously working. Iowa Code § 96.4-3; 871 IAC 22(2)(a). She began working full-time hours on August 28, 2013, and continues to be employed in that same capacity. The claimant contends that she is able and available for work because she can either quit her job or continue to work part-time. However, if that were the standard, any employee working full-time could meet the availability requirements. The claimant's availability for work is unduly limited because she is working to such a degree that she is removed from the labor market. 871 IAC 24.23(23). Benefits are denied.

**DECISION:**

The claimant's appeal is timely. The unemployment insurance decision dated January 8, 2014, (reference 02), is affirmed. The claimant does not meet the availability requirements. Benefits are denied.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs