

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NICOLE J KEATE
Claimant

APPEAL 17A-UI-08048-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 05/21/17
Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 28, 2017 (reference 08) unemployment insurance decision that denied benefits based upon a determination that claimant was not available for work because she is unduly limiting her hours. The parties were properly notified of the hearing. A telephone hearing was held on August 25, 2017. The claimant, Nicole J. Keate, participated. The employer, Advance Services, Inc., participated through Melissa Lewien, Risk Manager. Employer's Exhibits 1 through 4 were received and admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the appeal timely?
Is the claimant able to work and available for work effective July 9, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a temporary employee assigned to work at Cardinal Glass, from June 11, 2015 until April 28, 2017, when she quit because she was going to have a baby. Claimant gave birth to a son on May 5, 2017. She has been medically cleared to return to work. However, claimant is only looking for part-time work at this time. She wants to stay home at least part-time with her son until he turns one year old. Claimant explained that she does not want to miss important moments in her son's life. Claimant communicated this information to the employer via text message. (Exhibit 4)

Claimant received the unemployment insurance decision finding her not available for work. She could not recall the date on which she received it. Additionally, claimant did not know whether she got the decision before the August 7 appeal deadline had passed.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is voluntarily limiting her availability to part-time work only. Therefore, claimant is not considered available for work.

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:

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.

Here, claimant could not recall when she received the unemployment insurance decision. As this appeal hearing was held simultaneously with two other appeals claimant filed, both of which were timely filed, the administrative law judge believes it is possible that claimant got confused by the volume of mail she received from the agency. Claimant is advised to closely read all mail from the agency and heed all deadlines in the future. The administrative law judge will consider this appeal to have been timely filed.

The next issue is whether claimant was able to work and available for work. 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. 871-24.22(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.

Iowa Admin. Code r. 871-24.23(16) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

Claimant testified that she is released to return to full-time work and claims she is "available" for work. However, claimant is only seeking part-time employment, as she wants to stay home with her infant son. Claimant has voluntarily limited the number of hours she would work due to her desire to be with her child. The employer is not obligated to provide a certain number of part-time hours, and claimant's reduction in hours is not attributable to the employer. Under these circumstances, claimant is not considered available for work. Accordingly, benefits are denied.

DECISION:

The July 28, 2017 (reference 08) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective July 9, 2017. Benefits are withheld.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn