

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISA L POPELKA

Claimant

APPEAL NO. 13A-UI--03392-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMP ASSOCIATES

Employer

OC: 07/04/10

Claimant: Appellant (2)

Section 96.6(2) – Prior Adjudication

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant, Lisa Popelka, filed an appeal from a decision dated March 11, 2013, reference 03. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on April 23, 2013. The claimant participated on her own behalf. The employer, Temp Associates, did not provide a telephone number where a witness could be contacted and did not participate.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

A prior hearing was held on this matter in appeal 12O-UI-0799-WT, and a decision issued on February 1, 2013. The matter had been remanded by the Employment Appeal Board in Appeal 12B-UI-02137 dated June 29, 2012. The order from the EAB stated a determination must be made on the claimant's availability for work from December 26, 2010 through July 3, 2011. The decision in the remanded hearing found the claimant was able and available for work during that time and was therefore eligible for benefits. The decision was not appealed to the EAB and has become final.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

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 issue of the claimant's availability for work has been determined in a prior hearing and that decision has become final as no appeal was made. Lisa Popelka is able and available for work.

DECISION:

The representative's decision of March 11, 2013, reference 03, is reversed. The claimant was available for work for the period December 26, 2010 through July 9, 2011.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/tll