

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL A WHITIS
Claimant

APPEAL NO: 12A-UI-14306-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WASHINGTON INVENTORY SERVICES INC
Employer

OC: 10/21/12

Claimant: Appellant (5)

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

STATEMENT OF THE CASE:

Michael A. Whitis (claimant) appealed a representative's November 16, 2012 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits in connection with his employment with Washington Inventory Services, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 8, 2013. The claimant participated in the hearing. Jerome Massey appeared on the employer's behalf. After the hearing was held, the administrative law judge discovered that another decision had been issued which in effect renders the November 16, 2012 decision moot. Based on a review of the available information and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant worked for the employer on a part-time basis (30 – 35 hours per week) as an inventory associate from July 7, 2011 through about December 1, 2012. He established a claim for unemployment insurance benefits effective October 21, 2012 so that he could seek at least partial unemployment insurance benefits, but he did not file any weekly continued claims until the weeks ending February 23 and March 2, 2013.

The representative's decision in this case had concluded that he was not employed at less than his usual hours and wages with the employer, and so was not able and available for work or eligible to receive unemployment insurance benefits. On March 12, 2013 another representative's decision (reference 04) was issued which concluded that there was a disqualifying separation from employment with this employer as of December 1, 2012, and that the claimant was not eligible to receive unemployment insurance benefits until he has

requaified by earning ten times his weekly benefit amount. The claimant did not appeal that decision, and it has become final.

REASONING AND CONCLUSIONS OF LAW:

As the determination that there has been a disqualifying separation from employment takes precedence over a determination that the claimant is not able and available for work, the question as to whether the claimant was employed in his same hours and wages or eligible and able and available for work for the weeks in which the claimant made weekly continued claims is moot.

Regardless as to whether the claimant was able and available for work, the claimant was not otherwise eligible to receive unemployment insurance benefits because there had been a disqualifying separation from employment.

DECISION:

The representative's November 16, 2012 decision (reference 02) is modified with no effect on the parties. The claimant was not eligible to receive unemployment insurance benefits for those weeks that he filed weekly continued claims, even if he might have been able and available for work during those weeks, because there has been another decision concluding that the preceding separation from employment was disqualifying.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css