

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CRYSTAL M GENTRY
Claimant

APPEAL NO: 17A-UI-10145-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WESTAR FOODS INC
Employer

OC: 04/23/17
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 May 16, 2017, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 23, 2017. The claimant participated in the hearing. The employer did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. 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 May 16, 2017. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by May 26, 2017. The appeal was not filed until October 4, 2017, which is after the date noticed on the disqualification decision. The claimant has experienced difficulty getting her mail and did not receive the decision until October 2, 2017.

The claimant worked for Westar Foods (Hardees) until approximately February 2017 at which time she left her position to accept a job at NPI (Pizza Hut). She worked for Pizza Hut until the week of April 23, 2017, at which time her employment was terminated and she filed a claim for unemployment insurance benefits and was allowed benefits. She looked for work for approximately two weeks and during those two weeks ending May 6, 2017, she was able and available for work. At the conclusion of those two weeks she was rehired by Hardees and was no longer able and available for work. The fact-finding decision does not reflect the claimant's hiring and separation from Pizza Hut and her rehire by Hardees or the fact she was able and available for the two weeks ending May 6, 2017, but not the weeks following that time period when she was working for Hardees again.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was able to work and available for work for the two weeks ending May 6, 2017.

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".

The claimant was separated from Pizza Hut in April 2017, and a decision was entered allowing benefits following that separation. She was able and available for work the two weeks ending May 6, 2017. She was then rehired by Hardees and was not able and available for work after that date. Accordingly, benefits are allowed for the two weeks ending May 6, 2017.

DECISION:

The May 16, 2017, reference 02, decision is reversed. The claimant's appeal is timely and she is able to work and available for work the two weeks ending May 6, 2017. Benefits are allowed for the two weeks ending May 6, 2017, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn