

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ZARKA DURATOVIC
Claimant

SDH EDUCATION WEST LLC
Employer

APPEAL 18A-UI-08955-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/17/17
Claimant: Appellant (4)

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 9, 2018, (reference 01) unemployment insurance decision that denied benefits based upon claimant's availability for work. The parties were properly notified about the hearing. A telephone hearing was held on September 13, 2018. Claimant participated personally and through an Interpreter with CTS Language Link. Employer participated through human resource manager Judy Jessen. Department's Exhibit D-1 was received. Employer's Exhibit 1 was received.

ISSUES:

Is the appeal timely?
Is the claimant able to work and available for work effective June 17, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The unemployment insurance decision was mailed to the appellant's address of record on July 9, 2018. The appellant did not receive the decision. The first notice of disqualification was communication with IWD on August 21, 2018. The appeal was sent within ten days after that communication.

Claimant works as a full-time food preparation worker for employer. Claimant is laid off every summer. Claimant went to Bosnia from June 20, 2018, to August 1, 2018. Claimant returned to work during the last week of August 2018.

REASONING AND CONCLUSIONS OF LAW:

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, in pertinent part:

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. . . . 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.

The appellant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant filed an appeal within a reasonable period of time after discovering the disqualification. Therefore, the appeal shall be accepted as timely.

The next issue is whether claimant is available for work.

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".

Iowa Admin. Code r. 871-24.23(25) provides:

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

(25) If the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market.

In this case, claimant was out of town for personal reasons from June 20, 2018, until August 1, 2018. Because claimant was out of the town the majority of the workweek during the one week ending June 23, 2018, she is not considered able to and available for work from June 17 through August 1, 2018. Claimant is considered able to and available for work effective August 1, 2018, and benefits should be allowed after that time, provided claimant is otherwise eligible.

DECISION:

The July 9, 2018, (reference 01) decision is modified in favor of appellant. The appeal is considered timely. The claimant is not able to and available for work from June 17, 2018, through August 1, 2018, and benefits are denied during that time period. Claimant is considered able to work and available for work effective August 1, 2018, and benefits are allowed after that date, provided claimant is otherwise eligible.

Christine A. Louis
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Decision Dated and Mailed

cal/scn