

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LORI M PARTIN
Claimant

PERL MORTGAGE INC
Employer

APPEAL 18A-UI-06180-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/15/18
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 – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

Lori M. Partin (claimant) filed an appeal from the May 4, 2018, reference 03, unemployment insurance decision that denied benefits based upon the determination she was not able to and available for work effective April 15, 2018 through the week ending May 19, 2018. After due notice was issued, a telephone conference hearing was held on June 21, 2018. The claimant participated. The employer responded to the hearing notice and declined to participate. The Department's Exhibits D1 through D3 were admitted into the record.

ISSUES:

Is the appeal timely?

Was the claimant able to work, available for work, and actively and earnestly seeking work effective April 15, 2018 through the week ending May 19, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed her claim for unemployment insurance benefits the week of April 15, 2018 after separation from employment and in preparation for her relocation to Germany with her military spouse. The claimant did not file weekly continued claims for benefits as she had not read the Unemployment Insurance Handbook and did not realize she needed to file the weekly claim in order to be eligible for benefits.

On April 28, 2018, the claimant and her family went on vacation to the state of Washington. They were on vacation until May 16, 2018, when they relocated to Germany. The claimant began looking for work and filing her weekly continued claims for benefits effective May 20, 2018. The claimant did not have any restrictions on her ability to or availability for work after that time.

The unemployment insurance decision was mailed to the claimant's address of record on May 4, 2018. The claimant still has not received the decision as it was mailed to an extended family member and she was in the process of transitioning to another location. The first notice of disqualification was communication with Iowa Workforce Development (IWD) on June 1, 2018 when she called to inquire about the status of her benefits. The appeal was filed the same day.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant's appeal was timely and she was not able to and available for work through the week ending May 19, 2018. Benefits are denied through May 19, 2018.

Iowa Code section 96.6(2) provides, in relevant part:

Filing – determination – appeal.

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 claimant 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 immediately upon discovering the disqualification. Therefore, the appeal shall be accepted as timely.

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. 871-24.22 provides, in relevant part:

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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

...

(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. 871-24.2(1)g provides, in relevant part:

Procedures for workers desiring to file a claim for benefits for unemployment insurance.

(1) Section 96.6 of the employment security law of Iowa states that claims for benefits shall be made in accordance with such rules as the department prescribes. The department of workforce development accordingly prescribes:

...

g. No continued claim for benefits shall be allowed until the individual claiming benefits has completed a continued claim or claimed benefits as otherwise directed by the department.

(1) The weekly continued claim shall be transmitted not earlier than 8 a.m. on the Sunday following the Saturday of the weekly reporting period and, unless reasonable cause can be shown for the delay, not later than close of business on the Friday following the weekly reporting period.

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.

An individual claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. The claimant

did not file weekly continued claims for the two week period ending April 28, 2018. The claimant's failure to read and follow the instructions in the Unemployment Insurance Benefits Handbook about filing weekly continued claims is not considered a good reason for having failed to file. The claimant was out of town for personal reasons for the three-week period ending May 19, 2018 and she was not available for work. Accordingly, benefits are denied through May 19, 2018.

DECISION:

The claimant's appeal is timely. The May 4, 2018, reference 03, unemployment insurance decision is affirmed. The claimant was not able to and available for work from April 15 through May 19, 2018. Benefits are denied through May 19, 2018.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn