

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DONISHA M VAZQUEZ-MACIEL**  
Claimant

**APPEAL NO. 17A-UI-03760-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE ANIMAL CENTER**  
Employer

**OC: 02/19/17**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Donisha Vazquez-Maciel (claimant) appealed a representative's March 22, 2017, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was not willing to work the number of hours required in her occupation with Care Animal Center (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 1, 2017. The claimant participated personally. The employer participated by Dawn Garrow, Manager, and Michelle Spencer, Owner. Exhibit D-1 was received into evidence. The claimant offered and Exhibit A was received into evidence.

**ISSUE:**

The issue is whether the appeal was filed in a timely manner and, if so, whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 13, 2014, as a part-time veterinary assistant/receptionist working twenty-five to thirty hours per week. She worked approximately every other Monday from 2:00 p.m. to 5:30 p.m., Wednesdays from 8:00 a.m. to 2:30 p.m., Thursdays from 2:00 p.m. to 5:00 p.m., Fridays from 8:00 a.m. to 6:00 p.m., and every other Saturday from 8:00 a.m. to approximately 1:30 p.m. When the claimant became pregnant, the employer asked her to obtain a work release from her physician. The January 13, 2017, work release stated the claimant could work no more than eight hour days and no more than forty hour weeks. She could work with animals over twenty-five pounds with assistance. The only scheduling accommodation the employer had to make was the claimant's hours on Fridays.

On January 13, 2017, the employer asked the claimant to work from 10:00 a.m. to close on Fridays. On January 28, 2017, the claimant asked the employer if she could work from 1:00 p.m. to close on Fridays because she had a problem with childcare. Later, the claimant told the employer she could work 10:00 a.m. to close again on Fridays. The employer decided to hire

two new employees and reduce the claimant's hours to between seven to ten hours per week. The claimant started being scheduled Wednesday 8:00 a.m. to 3:00 p.m. and every other Saturday 8 a.m. to 1:00 p.m. The claimant filed for unemployment insurance benefits with an effective date of February 19, 2017.

A disqualification decision was mailed to the claimant's last-known address of record on March 22, 2017. She did receive the decision within ten days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by April 3, 2017. On April 3, 2017, the claimant provided medical documentation to workforce development and two workers told her she did not need to file an appeal. On April 4, 2017, a different worker told her she did need to file an appeal. The appeal was not filed until April 4, 2017, which is after the date noticed on the disqualification decision.

### **REASONING AND CONCLUSIONS OF LAW:**

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

Iowa Code § 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.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was due to Agency error and misinformation pursuant to 871 IAC 24.35(2). The claimant was in contact with two workers who told her she did not need to file an appeal. The claimant filed her appeal one day late based on the workers' misinformation. Therefore, the appeal shall be accepted as timely.

The next issue is whether the claimant is able and available for work. The administrative law judge concludes she is.

871 IAC 24.23(17) provides:

(17) Work is unduly limited because the claimant is not willing to work the number of hours required to work in the claimant's occupation.

When an employee unreasonably limits the hours she is willing to work, she is considered to be unavailable for work. The claimant has not unreasonably limited her hours of work. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The March 22, 2017, reference 01, decision is reversed. The appeal in this case was timely. The claimant has not unreasonably limited her hours of work. Benefits are allowed, provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs