

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RAELEEN C JONES
Claimant

DEE ZEE INC
Employer

APPEAL 17A-UI-02041-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/23/16
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 November 16, 2016, (reference 02) 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 March 20, 2017. Claimant participated. Employer participated through human resource specialist Lacey Leichter. Claimant's Exhibit A was received.

ISSUES:

Is the appeal timely?
Is the claimant able to work and available for work effective October 23, 2016?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on August 17, 2015. Claimant is currently employed by employer as a full-time fork lift driver. On October 25 or 26, 2016, claimant complained to employer regarding her working conditions. Assuming the issue would not be resolved and she would resign, claimant filed a claim for unemployment insurance benefits. However, employer resolved the situation to claimant's satisfaction the day after she filed the complaint. Therefore, claimant did not resign or miss any work. After continuing her employment, claimant called the agency and explained she was no longer seeking benefits and asking for direction on how to proceed. Claimant was advised that she should simply take no action.

The November 16, 2016, (reference 02) unemployment insurance decision denying claimant benefits based on her availability for work was mailed to the appellant's address of record on November 16, 2016. Claimant received the decision within the appeal period. However, claimant did not file an appeal as she was employed and no longer seeking benefits, and had been instructed by the agency to take no action going forward.

Claimant continued working for employer. Claimant was laid off during the one week ending December 31, 2016, due to a lack of work. Claimant filed an additional claim effective December 18, 2016, and a weekly continued claim for the one week ending December 31, 2016. On January 20, 2017, a reference 04 decision was issued finding claimant able to and available for work effective December 25, 2016, due to a short-term layoff. However, claimant did not receive benefits. Claimant contacted the agency and was instructed she did not receive benefits, in part, due to the November 16, 2016, (reference 02) decision denying her benefits. Therefore, claimant filed an appeal on February 21, 2017.

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 claimant's failure to file an appeal within the appeal period was solely because of incorrect information received from an IWD customer service advisor. She found out about the misinformation when she did not receive benefits for the one week ending December 31, 2016. This delay was prompted by and perpetuated by the agency. See, Iowa Admin. Code r. 871-24.35(2). Therefore, the appeal shall be accepted as timely.

The next issue is whether the claimant was able to and available for work effective October 23, 2016.

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".

Iowa Admin. Code r. 871-24.23(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

Since claimant was working on a full-time basis, claimant was not able to or available for effective October 23, 2016. However, as noted in the reference 04 decision, claimant is able to or available for work effective December 25, 2016, as she was laid off for the one week ending December 31, 2016.

DECISION:

The November 16, 2016, (reference 02) unemployment insurance decision is modified in favor of appellant. The appeal is timely. The claimant is not able to work and available for work from October 23 through December 24, 2016. Benefits are denied during that time period. Claimant is able to and available for work effective December 25, 2016. Benefits are allowed for the one week ending December 31, 2016. Claimant earned \$107.12 in holiday pay during the one week ending December 31, 2016.

Christine A. Louis
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Decision Dated and Mailed

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