

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROOSEVELT T BENNETT
Claimant

APPEAL NO. 06A-UI-11801-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WESTAFF USA INC
Employer

OC: 11/15/06 R: 03
Claimant: Appellant (2)

Section 96.4-3 – Available for Work
Section 96.6-2 – Timely Appeal

STATEMENT OF THE CASE:

Roosevelt Bennett filed an appeal from an unemployment insurance decision dated November 15, 2006, reference 01, that denied benefits effective October 15, 2006 upon a finding that the claimant did not have adequate transportation to be considered available for work. After due notice was issued, a telephone hearing was held December 26, 2006, with Mr. Bennett participating. Branch Manager Vicki Mathias participated for the employer, Westaff USA, Inc. Exhibit D-1, the claimant's appeal letter, was admitted into evidence.

ISSUES:

Did the claimant file a timely appeal?

Is the claimant available for work?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: On October 24, 2006, Roosevelt Bennett declined an assignment from Westaff USA because the assignment was in Jesup, Iowa. Mr. Bennett had always worked in the Waterloo area. He subsequently became employed on or about November 21, 2006.

A fact-finding decision dated November 15, 2006 denied benefits to Mr. Bennett. He went to the Waterloo Workforce Development Center and filled out an appeal form. Office staff said they would forward the appeal to the Unemployment Insurance Appeals Section. The Appeals Section did not receive the appeal. Mr. Bennett filled out another form on December 1, 2006. It was forwarded to the Appeals Section by the Waterloo Workforce Development Center, arriving on December 11, 2006.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether Mr. Bennett has filed a timely appeal. Iowa Code section 96.6-2 gives parties 10 days from the date of a fact-finding decision to file an appeal. The claimant's testimony that he filled out an appeal form in the Waterloo Workforce Development Center within the time limits set by statute is credible. The administrative law judge concludes that the claimant did everything in his power to perfect an appeal within the time limits set by statute.

The remaining issue is whether Mr. Bennett has sufficient transportation to be considered 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".

The parties agree that Mr. Bennett had worked in the Waterloo area while employed by Westaff. The fact that he turned down an assignment in Jesup is not sufficient to find him unavailable for work. His testimony also establishes that he became employed in Waterloo in late November 2006. Benefits are allowed from the date of his claim, November 15, 2006 through November 18, 2006. He became employed the following week.

DECISION:

The unemployment insurance decision dated November 15, 2006, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs