

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERESA K FOREMAN
Claimant

APPEAL NO. 13A-UI-00344-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STAY IN HOME CARE LLC
Employer

OC: 03/21/10
Claimant: Appellant (2)

Section 96.4-3 - Able to and Available for Work
Section 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated May 2, 2011, reference 03, that concluded she was ineligible for benefits because she was still employed for the same hours and wages as her original contract of hire. A telephone hearing was held on February 15, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Allie McCarty participated in the hearing on behalf of the employer. Exhibit One and A-1 was admitted into evidence at the hearing. Official notice is taken of the Agency's records regarding the claimant's unemployment insurance claim, which show the claimant was in an approved training program from October 3, 2010, through March 19, 2011. If a party objects to taking official notice of these facts, the objection must be submitted in writing no later than seven days after the date of this decision.

ISSUES:

Did the claimant file a timely appeal?
Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant filed a claim for benefits effective March 21, 2010. Her claim was based on her full-time employment with Heartland Communications. She was in a department approved training program from October 3, 2010, through March 19, 2011, which means she was not required to look for work, be available for work, or be subject to disqualification for refusing work.

The claimant worked part time as a caregiver for the employer from January 3, 2011, to April 14, 2012. When she was hired, she informed the employer that she was only interested in part-time work because she was going to school and had family responsibilities. The employer accommodated that schedule by employing her for about 20 hours per week. She reported her wages on her weekly claims and received benefits reduced by her reported wages.

An unemployment insurance decision was mailed to the claimant's last-known address of record on May 2, 2011. The decision concluded she was ineligible for benefits because she was still employed for the same hours and wages as her original contract of hire and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by May 12, 2011.

The claimant never received the decision and was unaware that she was disqualified until she received an overpayment decision based on the decision disqualifying her in December 2012. She appealed that on December 13, 2012.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant filed a timely appeal.

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last-known address. Iowa Code § 96.6-2.

The next question is whether the claimant had a reasonable opportunity to file an appeal in a timely fashion. Hendren v. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC, 212 N.W.2d 471, 472 (Iowa 1973). The claimant filed her appeal late because she never received the original disqualification decision. The claimant did not have a reasonable opportunity to file a timely appeal. Her appeal is deemed timely.

The claimant filed for benefits because of her separation from her full-time employer and her supplemental employment with the employer does not disqualify her from receiving unemployment insurance benefits. The Agency apparently relied on 871 IAC 24.23(26) in denying benefits to the claimant.

871 IAC 24.23(26) provides: "Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed."

This section does not apply to this case because the claimant was applying for benefits based on her separation from her full-time employer. It should only be used when the claimant applies for partial unemployment insurance benefits from a base-period employer and that base-period employer who continues to employ the claimant for the same number of hours and wages as established at the time of hire. Instead, this case is governed by Iowa Code § 96.19-38, which deals with a situation where an claimant has supplemental employment in addition to her regular employment. Under this section of the law, claimants are considered partially unemployed if they have separated from their regular employer and earn less than their weekly benefit amount plus \$15.00 from supplemental employment.

The next issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code § 96.4-3. Normally, claimants whose claims are based on full-time employment are considered unavailable for work if they restrict themselves to part-time work. The claimant, however, was in department approved training while she worked for the employer and under Iowa Code § 96.4-6-a, cannot be denied benefits for not being available for work, for not actively searching for work, or for refusing suitable work. The idea is that the department has approved a claimant to focus on completing the approved training program to improve the claimant's

employability. The claimant would not have had to even look for work, so taking a part-time job would not disqualify her.

The claimant is eligible for benefits, and the employer's account is exempt from any charge for benefits paid to the claimant.

DECISION:

The unemployment insurance decision dated May 2, 2011, reference 03, is reversed. The claimant is eligible for benefits. The employer's account is exempt from any charge for benefits paid to the claimant.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/tll