

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHLEEN SOTHMAN

Claimant

APPEAL NO: 14A-UI-03750-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

BUREAU OF THE CENSUS

Employer

OC: 09/29/13

Claimant: Appellant (2)

Section 96.4-3 – Able and Available for Work

Section 96.4-3 – Same Hours and Wages

Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 9, 2013, reference 01, decision that denied benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 29, 2014. The claimant participated in the hearing. The employer did not respond to the hearing notice by providing a phone number where it could be reached at the date and time of the hearing as evidenced by the absence of a name and phone number on the Clear2There screen showing whether the parties have called in for the hearing as instructed by the hearing notice. The employer did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

ISSUES:

The issues are whether the claimant's appeal is timely and whether she was employed with the employer for the same hours and wages as contemplated in the original contract of hire the three weeks ending October 19, 2013.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's last-known address of record on December 9, 2013. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by December 19, 2013. The appeal was not filed until April 7, 2014, which is after the date noticed on the disqualification decision. The claimant did not receive the representative's decision and claimed benefits for three weeks. Consequently, she did not know she had been denied benefits or that she needed to file an appeal of that decision until she received the decision stating she was overpaid benefits. Under these circumstances, the administrative law judge finds the claimant's appeal is timely.

The claimant is employed as a part-time field representative with the United States Census Bureau. Due to the shutdown of the federal government around October 1, 2013, the claimant

did not work the three weeks ending October 19, 2013. Although the shutdown lasted approximately one more week, the claimant did not file a weekly claim after being notified she would be returning to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not employed at the same hours and wages as contemplated in the original contract of hire for the three weeks ending October 19, 2013.

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".

871 IAC 24.23(26) provides:

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

(26) 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.

The claimant was hired as a part-time field representative. There has been no separation from her part-time employment but for the three weeks ending October 19, 2013, she was not employed at the same hours and wages as contemplated in her original contract of hire due to the shutdown of the federal government. Therefore, benefits are allowed for the three weeks ending October 19, 2013.

DECISION:

The December 9, 2013, reference 01, decision is reversed. The claimant was not employed at the same hours and wages as in her original contract of hire for the three weeks ending October 19, 2013. Benefits are allowed.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css