

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVINA IVY
Claimant

APPEAL NO: 17A-UI-00863-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELITE FLAGGING INC
Employer

OC: 11/13/16
Claimant: Appellant (2)

Section 96 5-1 – Voluntary Leaving – Layoff
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 7, 2016, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 15, 2017. The claimant participated in the hearing. The employer declined to participate in the hearing. Department's Exhibit D-1 was admitted into evidence.

ISSUE:

The issue is whether the claimant was laid off.

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 7, 2016. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by December 17, 2016. That date fell on a Saturday so the appeal was not due until December 19, 2016. The appeal was not filed until January 24, 2017, which is after the date noticed on the disqualification decision. The claimant did not appeal within the time prescribed because she did not receive the decision and simply believed the Department was running behind. Under these circumstances, the administrative law judge finds the claimant's appeal is timely.

The claimant was employed as a full-time flagger for Elite Flagging from July 27, 2014 to September 13, 2016. Her job is seasonal and she was laid off due to a lack of work. She anticipates that she will return to this position next season.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was laid off due to a lack of work.

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

The claimant's position is seasonal and she was laid off September 13, 2016,. The separation was attributable to a lack of work by the employer. Therefore, benefits are allowed.

DECISION:

The December 7, 2016, reference 01, decision is reversed. The claimant's appeal is timely. The claimant was laid off due to a lack of work. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/rvs