

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER L ROLING
Claimant

APPEAL NO. 13A-UI-09392-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 04/14/13
Claimant: Appellant (4)**

Section 96.4-3 – Able and Available
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated July 26, 2013, reference 03, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on August 29, 2013. Claimant participated personally. Exhibit A was admitted into evidence.

ISSUE:

The issue in this matter is whether claimant is able and available for work. The issue is whether the appeal is timely.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was working 40 hours a week effective April 21, 2013. Claimant had a day off due to a holiday the week ending June 1. Claimant was laid off effective the week of June 9 and received only two days of work.

Claimant had many conversations with Workforce representatives. None completely explained to claimant the necessity of timely filing an appeal. Claimant was confused then and still now over the difference of working full time and being willing to accept other employment. Claimant filed her appeal late due to lack of clear information about the necessity of appealing these decisions.

REASONING AND CONCLUSIONS OF LAW:

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".

Claimant worked full 40-hour weeks. This removed claimant from the job market and as such she is not able and available for work. The holiday weekend does not change that finding. No work was available in the open labor market on the holiday and as such that does not make claimant available for work even though she was one day short of a full 40 hours. However, the job ended on the last week in question and claimant did not get 40 hours of work. Benefits shall be withheld effective April 21, 2013 through June 8, 2013. Benefits shall be allowed effective June 9, 2013 as the job was over with claimant receiving significantly less than 40 hours for the week.

Iowa Code section 96.6-2 provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Claimant's appeal is timely. Workforce representative did not thoroughly explain to claimant the need to appeal. The less than clear information excuses the delay in appealing.

DECISION:

The decision of the representative dated July 26, 2013, reference 03, is modified. Claimant is not eligible to receive unemployment insurance benefits, effective April 21, 2013 through June 8, 2013. Benefits shall be allowed effective June 9, 2013. Claimant's appeal is timely.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/css