

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

ALMA A RAMIEREZ
Claimant

APPEAL NO. 15A-UI-04771-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

JELD-WEN INC
Employer

OC: 02/22/15
Claimant: Appellant (4)

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

STATEMENT OF THE CASE:

Alma Ramirez (claimant) appealed a representative's March 25, 2015, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she is still employed with Jeld-Wen (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 1, 2015. The claimant participated personally. The employer participated by Cole Johnson, Human Resource Associate, and Diana Duncan, Regional Human Resource Manager. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the appeal was filed in a timely manner and, if so, whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 19, 2013, as a full-time assembler. The claimant was laid off for lack of work from February 24 through 27, 2015. She is currently employed with this employer. She filed for unemployment insurance benefits with an effective date of February 22, 2015. Every time the claimant went to the Workforce office the interpreter was gone and there was no attempt to find an interpreter for the claimant. One time a worker at IWD did not understand the claimant and told her to apply for a second week of benefits even though the claimant had returned to work.

A disqualification decision was mailed to claimant's last-known address of record on March 25, 2015. She did receive the decision within ten days but did not have anyone to translate the document to her. The claimant did not think that IWD would translate the document for her. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by Saturday, April 4, 2015. The claimant could file a timely appeal by Monday, April 6, 2015. When the claimant's husband returned from his out-of-town construction job, he

translated the appeal letter for her. She then went to IWD and filed an appeal. The appeal was not filed until April 20, 2015, which is after the date noticed on the disqualification decision.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the claimant's appeal is timely. The administrative law judge determines it is.

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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 96.8, subsection 5.

The claimant did not have an opportunity to appeal the fact-finder's decision because the agency did not provide the claimant help with filing her appeal. Each time she appeared at IWD the interpreter was not available and one was not obtained on the telephone. The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was due to Agency error or delay pursuant to 871 IAC 24.35(2). Therefore, the appeal shall be accepted as timely.

The next issue is whether the claimant was able and available for work for the two-week period ending March 7, 2015.

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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

There was no evidence that there were any restriction or limitation on employability for the week ending February 28, 2015. Accordingly, benefits are allowed.

Iowa Admin. Code r. 871-24.23(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

The claimant was working to such an extent as to remove her from the work force for the week ending March 7, 2015. The claimant is disqualified from receiving unemployment insurance benefits because she was not available for work for the week ending March 7, 2015.

DECISION:

The March 25, 2015, reference 01, decision is modified in favor of the claimant. The claimant's appeal is timely. There was no evidence that there were any restriction or limitation on employability for the week ending February 28, 2015. The claimant is eligible to receive unemployment insurance benefits for the week ending February 28, 2015.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css