

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**VALERIE R ELLISON**  
Claimant

**APPEAL NO. 10A-UI-15177-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CITYWIDE CLEANERS INC**  
Employer

**OC: 09-26-10**  
**Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Able and Available  
871 IAC 24.23(26) – Same Hours and Wages  
Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the October 21, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on December 14, 2010. The claimant did participate. The employer did participate through Connie McCormick, Sales Manager. Department's Exhibit D-1 was entered and received into the record.

**ISSUES:**

Did the claimant file a timely appeal?

Was the claimant employed at the same hours and wages throughout her employment?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a customer service representative full time beginning July 8, 2010 through October 21, 2010 when she was separated. During the entire course of her employment the claimant was working a minimum of thirty-six hours per week. The employer did plan on reducing her hours due to disciplinary action that did not occur. The claimant's separation is set for a fact-finding interview and is not the subject of this case.

The claimant went into her local office to file an appeal on November 1, 2010 and was told she needed to file a new claim since she had been separated from her employment. She was not told to file an appeal to the fact-finding decision issued on October 21, 2010 until she returned to her local office on November 2, 2010.

**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 § 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.

The claimant did not have an opportunity to appeal the fact-finder's decision because she was given incorrect information from her local office. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes that the claimant is claimant able to work and available for work during the entire period of her employment as her hours were never reduced from thirty-six per week.

Iowa Code § 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.

Since the claimant was employed at the same hours and wages as at the time of hire, she is not able to and available for work. Accordingly, benefits are denied.

**DECISION:**

The October 21, 2010, reference 01, decision is affirmed. The claimant is not able to work and available for work effective September 26, 2010. Benefits are denied.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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