

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BESSIE L JOHNSON
Claimant

APPEAL 17A-UI-08303-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

**OC: 06/11/17
Claimant: Appellant (2)**

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 21, 2017, (reference 01), unemployment insurance decision that denied benefits based upon claimant's availability for work. After due notice was issued, a telephone conference hearing was scheduled to be held on August 31, 2017. Claimant participated.

ISSUES:

Is the appeal timely?

Is the claimant able to work and available for work during the one week ending July 8, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The unemployment insurance decision was mailed to the appellant's address of record on July 21, 2017. The appellant did not receive the decision. The first notice of disqualification was the overpayment decision dated August 7, 2017. The appeal was sent within ten days after receipt of that decision.

Claimant was able to and available for work during the one week ending July 8, 2017. Claimant inadvertently marked that she was unavailable for work that week when filing her continued weekly claim.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 96.6(2) provides, in pertinent part:

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. . . . 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.

The appellant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant timely appealed the overpayment decision, which was the first notice of disqualification. Therefore, the appeal shall be accepted as timely.

Furthermore, the administrative law judge finds claimant was able to and available for work during the one week ending July 8, 2017.

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 had no medical restriction or other limitation on her employability during the one week ending July 8, 2017. Accordingly, benefits are allowed.

DECISION:

The July 21, 2017, (reference 01) decision is reversed. The appeal is timely. The claimant was able to and available for work during the one week ending July 8, 2017. Benefits are allowed.

Christine A. Louis
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Decision Dated and Mailed

cal/scn