

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CYNTHIA JAMESON
Claimant

APPEAL NO: 16A-UI-10922-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 06/26/16
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 4, 2016, reference 01, decision that denied benefits for the week ending July 23, 2016. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 24, 2016. The claimant participated in the hearing. Department's Exhibit D-1 was admitted into evidence.

ISSUE:

The issues are whether the claimant's appeal is timely and whether she is able and available for work.

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 August 4, 2016. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by August 14, 2016. That date fell on a Sunday so the appeal was actually due August 15, 2016. The appeal was not filed until October 8, 2016, which is after the date noticed on the disqualification decision.

When the claimant received the letter stating she was not considered able and available for work the week ending July 23, 2016, she contacted the Department and spoke to three representatives. She was concerned about the overpayment but was told the Department has already withheld her benefits for one week to cover the overpayment. The claimant then received an overpayment decision dated September 29, 2016, indicating she was overpaid benefits for the one week ending July 23, 2016, and again contacted the Department at which time a representative suggested she appeal both decisions. Because the claimant reasonably believed the problem had been resolved she did not appeal the original able and available for work decision in a timely manner. The administrative law judge concludes the claimant has demonstrated a good cause reason for failing to file her appeal in a timely manner and consequently the appeal shall be considered timely.

The claimant filed a claim for benefits with an effective date of June 26, 2016. When filing her claim for the week ending July 23, 2016, the claimant accidentally hit the wrong button on her phone indicating she was not able and available for work that week when in fact she was able and available for work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is able and available for work the week ending July 23, 2016.

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".

The claimant accidentally hit the wrong button when calling in her claim for the week ending July 23, 2016. She incorrectly indicated she was not able and available for work that week when in fact she was able and available. Under these circumstances, the administrative law judge finds the claimant was able and available for work the week ending July 23, 2016. Accordingly, benefits are allowed.

DECISION:

The August 4, 2016, reference 01, decision is reversed. The claimant's appeal is timely and she was able and available for work the week ending July 23, 2016. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs