

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DEBRA D LOVE Claimant FIRST HOSPITALITY GROUP Employer	<div>68-0157 (9-06) - 3091078 - EI</div> <div>APPEAL NO: 07A-UI-03230-DWT</div> <div>ADMINISTRATIVE LAW JUDGE DECISION</div> <div>OC: 01/07/07 R: 02 Claimant: Appellant (4)</div>
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Section 96.4-3 – Ability and Availability for Benefits

STATEMENT OF THE CASE:

Debra D. Love (claimant) did not intend to appeal the representative's March 9, 2007 decision (reference 03) because she received a notice on March 15 she was not eligible to receive benefits because she was not unemployed this week. The Appeals Section, however, scheduled a hearing regarding the representative's March 9, 2007 decision. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 16, 2007. The claimant participated in the hearing. Connie Brown, the general manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

What is the legal effect of the representative's March 9 decision that the claimant never planned to appeal?

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits during the week of January 7, 2007. On March 9, 2007 a decision was mailed to the claimant and employer informing them the claimant was not considered available to work as of January 7, 2007, because she worked enough hours to remove herself from the labor market. The claimant received this decision on or about March 16 or 17. The claimant did not disagree with this decision for that week. Shortly after receiving the March 9 decision, the claimant received notice she was not eligible or her claim was cancelled because she earned too much in wages. Again, the claimant did not disagree with the decision and did not believe she needed to do anything.

On March 21, 2007, another decision was mailed to the claimant indicating she had been overpaid \$50.00 in benefits she received for the week ending January 20, 2007. The claimant appealed this decision on March 29, 2007.

REASONING AND CONCLUSIONS OF LAW:

Since the claimant did not intend to appeal the March 9 decision because she did not disagree with it, the timeliness issue is moot. The representative's March 9 decision, however, attempts to disqualify the claimant from receiving benefits as of January 7, 2007, when the law specifically states each week a claimant files a claim, the claimant must establish that she is able to and available for benefits. Iowa Code section 96.6-2. Since the claimant did not work as many hours the week ending January 20, but worked as many hours as the employer had available for her to work, the claimant's weekly situation changed and her eligibility based her ability and availability must again be examined for the week ending January 20. This means that while the claimant is not eligible to receive benefits for the week ending January 13, 2007, because she was fully employed that week, the claimant's eligibility in future weeks must be examined to determine if the claimant is available for work because she has or has not worked enough hours that she is not partially unemployed.

DECISION:

The representative's March 9, 2007 decision (reference 03) is affirmed in that the claimant is not eligible to receive benefits for the week ending January 13, 2007. Since the basis for the decision is Iowa Code section 96.4-3, the Claims Section must each week determine if the claimant is eligible to receive benefits when there are some weeks the claimant has excessive earnings.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs