

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

YVONNE FORTNER
Claimant

APPEAL NO. 12A-UI-13700-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY OF CLINTON
Employer

OC: 02/26/12
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant, Yvonne Fortner, filed an appeal from a decision dated November 2, 2012, reference 06. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on December 18, 2012. The claimant participated on her own behalf. The employer, City of Clinton, participated by Transit Operations Coordinator John Griffin, Transit Director Dennis Hart and was represented by City Attorney Jeff Farwell. Exhibit D-1 was admitted into the record.

ISSUE:

The issue is whether the appeal is timely.

FINDINGS OF FACT:

A disqualification decision was mailed to the claimant's last-known address of record on November 2, 2012. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by November 12, 2012. The appeal was not filed until November 16, 2012, which is after the date noticed on the decision. The claimant maintained she had faxed the appeal letter in on November 9, 2012, but it was not received by the Appeal Section. When she contacted Appeals she was told on November 16, 2012, it had not been received, she immediately faxed another copy.

Ms. Fortner began employment with Clinton on August 16, 2012, as a part-time bus driver. The job description states the hours would be between 6 and 34 hours per week. The claimant filed an additional claim for benefits effective October 14, 2012, because she felt she was working reduced hours.

The employer makes no guarantee of a minimum number of hours per day, week or pay period for part-time drivers. Full-time drivers have regular routes and part-time drivers fill in either before or after the usual eight-hour shift, or act as substitutes for illness or vacation of the regular drivers.

Ms. Fortner worked approximately 20 hours per week in June, July, August, September and October 2012, even though one of the routes had been cut.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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 claimant has maintained she faxed an appeal within the ten-day time period required. There is nothing in the record to the contrary and the appeal shall be accepted as timely.

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".

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.

The claimant is working for her regular employer in the same capacity as specified in the contract of hire and not working on a reduced work-week basis. The hours she worked in October were averaging the same as in the prior four months. Under the provisions of the above Administrative Code section, she is not able and available for work and is ineligible for unemployment benefits.

DECISION:

The decision of the representative dated November 2, 2012, reference 06, is affirmed. The appeal shall be accepted as timely. Yvonne Fortner is not eligible for benefits as she is not able and available for work.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css