

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THERESA A CHRISTIAN
Claimant

APPEAL NO. 10A-UI-13736-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

2ND STREET EMPORIUM
Employer

OC: 07/11/10
Claimant: Appellant (6)

Section 96.4-6-a – Department-Approved Training
871 IAC 26.8(4) – Vacation of Department Decision

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated September 20, 2010, reference 01, that held she was not eligible for benefits, because she did not meet the availability requirements of the law. A hearing was held on November 17, 2010. The claimant participated. Scott Rector participated for the employer.

ISSUE:

The issue is whether the department should be vacated.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered the evidence in the record, finds that: The claimant applied for and was granted department-approved training by a department decision dated August 24, 2010, reference 05, for the period from August 8, 2010, through December 18, 2010. The decision affect allows claimant to attend training and receive benefits without any requirement she search for work, and she is not subject to any availability disqualification. No employer's account is charged with benefits paid to claimant (Iowa Code section 96.4-6-a). The claimant and employer stipulated that the department decision denying claimant benefits be vacated.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.4-6-a-b provides:

6. a. An otherwise eligible individual shall not be denied benefits for any week because the individual is in training with the approval of the director, nor shall the individual be denied benefits with respect to any week in which the individual is in training with the approval of the director by reason of the application of the provision in subsection 3 of this section relating to availability for work, and an active search for work or the provision of section 96.5, subsection 3, relating to failure to apply for or a refusal to accept suitable work. However, an employer's account shall not be charged with benefits so paid.

b. An otherwise eligible individual shall not be denied benefits for a week because the individual is in training approved under 19 U.S.C. § 2296(a), as amended by section 2506 of the federal Omnibus Budget Reconciliation Act of 1981, because the individual leaves work which is not suitable employment to enter the approved training, or because of the application of subsection 3

of this section or section 96.5, subsection 3, or a federal unemployment insurance law administered by the department relating to availability for work, active search for work, or refusal to accept work.

For purposes of this paragraph, "suitable employment" means work of a substantially equal or higher skill level than an individual's past adversely affected employment, as defined in 19 U.S.C. § 2319(l), if weekly wages for the work are not less than eighty percent of the individual's average weekly wage.

871 IAC 26.8(3), (4) and (5) provide:

Withdrawals and postponements.

(3) If, due to emergency or other good cause, a party, having received due notice, is unable to attend a hearing or request postponement within the prescribed time, the presiding officer may, if no decision has been issued, reopen the record and, with notice to all parties, schedule another hearing. If a decision has been issued, the decision may be vacated upon the presiding officer's own motion or at the request of a party within 15 days after the mailing date of the decision and in the absence of an appeal to the employment appeal board of the department of inspections and appeals. If a decision is vacated, notice shall be given to all parties of a new hearing to be held and decided by another presiding officer. Once a decision has become final as provided by statute, the presiding officer has no jurisdiction to reopen the record or vacate the decision.

(4) A request to reopen a record or vacate a decision may be heard ex parte by the presiding officer. The granting or denial of such a request may be used as a grounds for appeal to the employment appeal board of the department of inspections and appeals upon the issuance of the presiding officer's final decision in the case.

(5) If good cause for postponement or reopening has not been shown, the presiding officer shall make a decision based upon whatever evidence is properly in the record.

The administrative law judge has reviewed the records and files herein and concludes the department decision dated September 20, 2010, reference 01, is vacated and set aside.

The claimant was granted department-approved training, and the law does not require her to otherwise meet the availability requirements of searching for work or being available for work. The department issued the decision in error. The claimant is allowed benefits, and no employer's account is charge.

DECISION:

The representative's decision dated September 20, 2010, reference 01, is vacated and set aside. The claimant is allowed benefits by reason of department-approved training, and no employer's account is charged.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw