

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

INES ZUBCEVIC
Claimant

APPEAL NO. 10A-UI-08405-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GUARDSMARK LLC
Employer

**OC: 01/24/10
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant, Ines Zubcevic, filed an appeal from a decision dated February 24, 2010, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on July 29, 2010. The claimant participated on her own behalf. The employer, Guardsmark, participated by Branch Manager Steve Armstrong. Exhibit D-1 admitted into the record.

ISSUE:

The issue is whether the appeal is timely and whether the claimant is able and available for work.

FINDINGS OF FACT:

A disqualification decision was mailed to the claimant's last known address of record on February 24, 2010. The claimant does not believe she ever received the decision, although in six months she did not notice she had not been receiving benefits even though she filed a weekly claim. A workforce representative was finally able to explain to her in June 2010 she was not receiving benefits because of this decision and she filed an appeal.

Ines Zubcevic was employed by Guardsmark beginning September 25, 2007 as a part-time security guard. She was not guaranteed any minimum number of hours per week and usually worked about 16 hours every week, mostly on the weekend. She continues in that capacity as of the date of the hearing.

She filed a claim for unemployment benefits with an effective date of January 24, 2010, because that was when her previous benefit year ended. She has been filing for benefits since 2008, but for this year all of her base period wages were earned in this part-time employment. In addition, her weekly benefit amount is less this year because of fewer earnings during the base period. She has filed a claim every week since January 24, 2010, and reported \$156.00 in wages every week except for the week ending May 22, 2010, when she was sick one day of her two-day schedule.

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 maintains she did not receive the decision but did acknowledge she was busy and had many things to take care of during that time and did not always open the envelopes she received from Iowa Workforce Development. In addition, she had approximately six months to review her bank statements to discover she was not getting any unemployment benefits deposited to her account. But, the administrative law judge is willing to err on the side of the claimant and allow the appeal.

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 next issue is whether the claimant is able and available for work. She is not, as she is employed at the same hours and wages as she was at the time of hire and during the entire course of her base period. In addition, her weekly wages are higher than her weekly unemployment benefit amount plus \$15.00. She is ineligible for benefits.

DECISION:

The decision of the representative dated February 24, 2010, reference 01, is affirmed. The claimant is not able and available for work and is ineligible for unemployment benefits.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw