

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENISE P MYERS
Claimant

APPEAL NO. 12A-UI-11648-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JULEE VINZ
Employer

OC: 08/14/11
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated September 13, 2012, reference 05, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on December 10, 2012. Claimant participated personally. Employer participated by Julee Vinz, Employer and Renee McAtee, Payroll, Consumers Choices Options Representative Two. Exhibit A was admitted into evidence.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant works for employer part time. Claimant is able and available to work full time. Claimant has never turned down full-time work. Claimant has been able and available for full-time work at all times after August 2010. Claimant went to Colorado for vacation June 17, 2012 through June 30, 2012. Claimant was not available for work in the location where work was generally available.

Claimant faxed her appeal on September 21, 2012. Claimant used an outdated fax machine. Claimant called on Monday September 24, 2012 and discovered that the appeal was not received. Claimant again appealed on September 27 by mailing a letter with the postal service.

REASONING AND CONCLUSIONS OF LAW:

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".

Benefits shall be withheld effective June 17, 2012 through June 30, 2012 because claimant went to Colorado for vacation. Claimant was not available for work in the location where work was generally available.

Iowa Code section 96.6-2 provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Claimant's appeal is timely as the delay was caused by a fax error. The first appeal was faxed in a timely manner. The non receipt was due to a fax error.

DECISION:

The decision of the representative dated September 13, 2012, reference 05, is affirmed. Claimant is not eligible to receive unemployment insurance benefits, effective June 17, 2012 through June 30, 2012, until claimant meets all other eligibility requirements. Claimant's appeal is timely.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/css