

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SOPHIE L QUAYE
Claimant

APPEAL NO. 09A-UI-15811-L

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT & COMPANY
Employer

OC: 09/14/08
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 31, 2009 (reference 03) decision that denied benefits. After due notice was issued, a hearing was held in Des Moines, Iowa on November 17, 2009. Claimant participated. Employer participated through human resources assistant manager Javier Sanchez. Department's Exhibit D-1 was received.

ISSUE:

The issue is whether claimant's appeal is timely and if she is able to and available for work effective October 25, 2009.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to claimant's last-known address of record on October 31, 2008 and she did not appeal until October 19, 2009, shortly before she filed a new claim effective October 25, 2009. She claimed no benefits in the September 14, 2008 claim year and requalified for benefits as of about May 2009 according to the administrative record.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes claimant's appeal is untimely but she has requalified for benefits since the separation and before the current claim year and is able to work as of October 25, 2009.

Iowa Code § 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.

Iowa Code § 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".

Claimant has requalified for benefits since the separation from this employer as of May 2009 and since the prior claim year separation decision. Accordingly, she has obviously established her ability to work by her requalification with another employer. Benefits are allowed and the account of the employer (account number 275457) shall not be charged.

DECISION:

The October 31, 2009 (reference 03) decision is modified in favor of the appellant. The appeal in this case was not timely, but the claimant has requalified for benefits since the separation and

before the current claim year. The requalification has been addressed by claims on the hearing date by the reference 03 decision. She has established her ability to and availability for work effective October 25, 2009.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs