

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALISA D PRIEST**  
Claimant

**APPEAL NO. 11A-UI-12988-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LEFTY'S CONVENIENCE STORE INC**  
Employer

**OC: 01/10/10**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant, Alisa Priest, filed an appeal from a decision dated February 23, 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 October 27, 2011. The claimant participated on her own behalf. The employer, Lefty's, participated by Vice President Kent Wright. 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 February 23, 2010. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by March 6, 2010. The appeal was not filed until September 30, 2011, which is after the date noticed on the decision.

The claimant maintains she took the decision to her local Workforce Center and was told she did not have to file an appeal and did not do so until she received a decision in September 2011 regarding an overpayment.

Ms. Priest worked only part-time, on-call, for Lefty's beginning April 2009 after she was laid off from her regular, full-time job at Rockwell. She had been recalled to that job in late January 2010 and filed only one week of benefits on her claim effective January 10, 2010. She did not work at all the week ending January 16, 2010, but was available for both this part-time job and to return to her regular full-time status.

**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 administrative law judge finds it entirely unlikely any workforce representative would discourage a claimant from filing an appeal from a decision not in their favor and carrying the possibility of an overpayment. But, as the claimant could not state who gave her that information, it is impossible to verify if such advice was actually given, as unlikely as it is. To err on the side of making a determination on the facts of the case, the administrative law judge therefore finds the appeal should 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".

The claimant worked only part-time for this employer, waiting to be recalled to her regular, full-time job. She remained able and available for full-time work and cannot be considered ineligible for

**DECISION:**

The representative's decision dated February 23, 2010, reference 01, is reversed. The appeal shall be accepted as timely. Alisa Priest is eligible for benefits, as she was able and available for work.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw