

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**TRACI HODGES**  
Claimant

**APPEAL 19A-UI-08749-CL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 08/11/19  
Claimant: Appellant (1)**

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Iowa Code § 96.4(3) – Able and Available/Work Search  
Iowa Admin. Code r. 871-24.22(3) – Earnest and Active Search for Work  
Iowa Admin. Code r. 871-24.23(28) – Work Search Warning  
Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

On November 5, 2019, the claimant filed an appeal from the October 22, 2019, (reference 02) unemployment insurance decision that gave claimant a warning for failing to make at least two job contacts during the one week ending October 19, 2019. Claimant was properly notified about the hearing. A telephone hearing was held on November 20, 2019. Claimant participated personally. Department's Exhibit D-1 was received.

**ISSUES:**

Is the appeal timely?

Did the claimant make an adequate work search for the week-ending October 19, 2019, and was the warning appropriate?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: On October 22, 2019, Iowa Workforce Development mailed the reference 02 unemployment insurance decision to the claimant's last known address of record. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by November 1, 2019. Claimant did not receive the decision. The appeal was not entered until November 5, 2019, when claimant timely appealed a reference 01 decision denying her benefits.

The claimant claimed benefits for the week ending October 19, 2019. Claimant did not make at least two job contacts that week. Claimant did not search for work because she was ill that week.

## REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is.

Iowa Code § 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 appellant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant timely appealed the reference 01 decision, which was the first notice of ineligibility. Therefore, the appeal shall be accepted as timely.

The next issue is whether claimant was properly warned regarding making two work searches per week.

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".

Iowa Admin. Code r. 871-24.23(28) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(28) A claimant will be ineligible for benefits because of failure to make an adequate work search after having been previously warned and instructed to expand the search for work effort.

The claimant did not search for work during the one week ending October 19, 2019, therefore the warning was appropriate.

**DECISION:**

The October 22, 2019, (reference 02) unemployment insurance decision is affirmed. The appeal is timely. The claimant did not make an active and earnest search for work for the week-ending October 19, 2019. Therefore, the warning was appropriate.



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Christine A. Louis  
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November 27, 2019  
Decision Dated and Mailed

cal/scn