

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ARMIDA GARCIA DE PLAZA
Claimant

MARRIOTT HOTEL SERVICES INC
Employer

APPEAL 14A-UI-10120-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/23/14
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2)j – Available for Work – LOA terms
Iowa Admin. Code r. 871-24.23(10) – Availability Disqualifications – LOA period
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 1, 2014 (reference 01) unemployment insurance decision that denied benefits based upon a medical leave of absence (LOA). After due notice was issued, a hearing was held by telephone conference call on October 21, 2014. Claimant participated with Guadalupe Jacobo. Employer participated through human resource manager Kim Compton. Department's Exhibit D-1 was received.

ISSUES:

Is the appeal timely?

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: An ineligibility unemployment insurance decision was mailed to the claimant's last-known address of record on April 1, 2014. She did not receive notice of the decision until visiting the local office on September 29, 2014 and filed an appeal the same day.

Claimant was employed as a full-time housekeeper until her separation on February 7, 2014. She has not worked since January 23, 2014. She was injured at work when she fell on the stairs and hurt the small finger on her hand. She returned to work January 20, 2014 with a note from her personal physician but housekeeping manager Lee sent her home because the doctor prescribed x-rays. The employer disputed the work-relatedness of the claim and declined to send her to the employer's doctor. The employer asked claimant to return to her personal physician to clarify the work restriction and gave her a form to give to her doctor. Her doctor returned the form to the employer on February 7, 2014; indicating she was unable to move, lift, carry, push, or pull more than ten pounds with her right hand and instructed her to find a different job. The employer did not mention the doctor's advice to find other work but offered

her a leave of absence because there was no current job opening that would fit the medical restrictions and her communication limitations. The employer instructed her to contact them if her restrictions were lifted. She has not seen a doctor since the separation from employment.

The employer provided her with short-term disability paperwork and she works directly with that department since the compensation is not paid through the hotel. She received disability insurance payments from mid-March through May 2014 in the amount of \$202.00 per week.

REASONING AND CONCLUSIONS OF LAW:

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

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.

The claimant 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). She filed an appeal upon learning of the disqualification. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work.

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".

Iowa Admin. Code r. 871-24.22(2)(1)(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

Iowa Admin. Code r. 871-24.23(10) provides:

(10) The claimant requested and was granted a leave of absence; such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

The claimant did not request a leave of absence, but it was offered only after her doctor advised her, with notice to the employer, to seek other employment. On that basis, benefits would be allowed pursuant to Iowa Code § 96.5(1)d. However, claimant has not established she is able to perform work according to her education, training, and work history given her medical restrictions. Accordingly, benefits are denied.

DECISION:

The April 1, 2014 (reference 01) decision is affirmed. The claimant's appeal is timely. She is not able to work and available for work effective February 23, 2014. Benefits are withheld until such time as the claimant makes herself medically and otherwise available for work to the extent she was available during the base-period history.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

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