

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GWEN A RICHARDSON
Claimant

APPEAL NO: 11A-UI-10536-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 06/12/11
Claimant: Appellant (4)

Section 96.4-3 – Able and Available
871 IAC 24.35(2) – Appeal Delay
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed a department decision dated July 20, 2011, reference 01, that held she was not eligible for benefits effective June 26, 2011, because she was visiting in another area. A telephone hearing was held on August 16, 2011. The claimant participated. Claimant Exhibit A was received as evidence.

ISSUES:

Whether the appeal is timely.

Whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witness, and having considered the evidence in the record, finds: The claimant filed an unemployment claim at her local workforce center in Iowa City effective June 12, 2011. The claimant began a move to Minnesota in order to seek employment, and she called the workforce center for assistance on June 22. She had made arrangements for forwarding her mail with the US Postal Service from an Iowa City address to her current address of record.

Claimant acknowledged she was not looking for work in Iowa City, but she was doing so in Minnesota. The department concluded she was visiting in Minnesota, and scheduled a fact finding for July 19 to determine whether she met the availability requirements of the law. After the scheduled interview, the department issued the disqualifying decision that was mailed to claimant's Iowa City address.

During the hearing in this matter, claimant acknowledged there was a period due to her moving process that she was not in a position to accept employment that hindered her work search. Claimant was able to continue her work search by making two job searches with Minnesota area employers for the week ending July 23, 2011, and for the subsequent weeks, thereafter.

Due to mail forwarding, claimant did not receive the department decision until about August 5, 2011, and she returned to Iowa City on August 10 to submit her appeal. She also wanted to discuss what she needed to do about her job search in her move to Minnesota to regain her benefit eligibility. The department authorized a group code 6 work search classification that allows claimant to use résumé submission in addition to in-person job contacts.

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.

871 IAC 24.35(2) provides:

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the department that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service or its successor.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The department shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to department error or misinformation or delay or other action of the United States postal service or its successor, the department shall issue an appealable decision to the interested party.

The administrative law judge concludes the claimant affected a timely appeal as the delay is based on good cause due to a move to another state and the mail forwarding process.

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 administrative law judge concludes that the claimant is not eligible for benefits during the period from June 26, 2011 to July 16, because she was relocating to another state and not in a position to make an adequate work search and/or accept employment.

A three-week disqualification is appropriate in this matter due to the circumstances of the claimant moving to another state. However, once the claimant established her move and put herself in a position to resume her work search in another State, she has effectively removed the need for any work-search disqualification. Claimant provided evidence of job search contacts for the week ending July 23, and thereafter. She traveled back to Iowa City for the purpose of renewing her benefit eligibility, and the department re-coded her work search to group code 6 that recognizes her current circumstance.

DECISION:

The department decision dated July 20, 2011, reference 01, is modified. The claimant filed a timely appeal. The claimant is not eligible for benefits for the three weeks ending July 16, 2011 due to moving to another State. The claimant has satisfied the availability requirements of the work search law effective July 17, 2011, and she is entitled to receive benefits, provided she is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

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