

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**SAMANTHA J BERG**  
Claimant

**APPEAL 15A-UI-14283-DL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 11/23/14  
Claimant: Appellant (2)**

---

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 December 9, 2015, (reference 11), unemployment insurance decision that denied benefits based upon not being able to or available for work. After due notice was issued, a telephone conference hearing was scheduled to be held on January 21, 2016. Claimant participated.

**ISSUES:**

Is the appeal timely?

Is the claimant able to and available for work the week ending November 14, 2015?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant did not receive the decision until the day she filed her appeal.

Claimant made one work search the week ending November 14, 2015, and then was notified she was hired by Cato, where she worked one day that week. She reported \$30.00 in gross wages for the 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:

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 appellant did not have an opportunity to appeal the unemployment insurance decision because the decision was not received in a timely fashion. Without timely 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 appellant filed the appeal the same day of receipt. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes that the claimant has made an active and earnest search 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".

The claimant has sufficiently demonstrated to the satisfaction of the administrative law judge an active and earnest search for work for the week ending November 14, 2015. Accordingly, the partial benefits as paid are allowed.

**DECISION:**

The December 9, 2015, (reference 11) unemployment insurance decision is reversed. The claimant did make an active and earnest search for work for the week ending November 14, 2015. Partial benefits as paid are allowed.

---

Dévon M. Lewis  
Administrative Law Judge

---

Decision Dated and Mailed

dml\pjs