

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHELLE L MCCOLLEY**  
Claimant

**APPEAL NO. 14A-UI-06557-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CLINTON COUNTY AREA SOLID WASTE  
AGENCY**  
Employer

**OC: 05/18/14**  
**Claimant: Appellant (2/R)**

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

**STATEMENT OF THE CASE:**

Michelle McColley (claimant) appealed a representative's June 11, 2014, decision (reference 03) that concluded she was not eligible to receive unemployment insurance benefits because she was not willing to work the number of hours required in her occupation with Clinton County Area Solid Waste Agency (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 30, 2014. The claimant participated personally. The employer participated by Brad Seward, Director. Exhibit D-1 was received into evidence. The claimant offered and Exhibit A was received into evidence.

**ISSUE:**

The issue is whether the appeal was filed in a timely manner and, if so, whether the claimant was able and available for work.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to claimant's last-known address of record on June 11, 2014. She did receive the decision within ten days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by Saturday, June 21, 2014. The claimant took the appeal to her bank and the bank told her it was faxed on Monday, June 23, 2014. The bank did not fax the appeal until Tuesday, June 24, 2014. The appeal was not filed until Tuesday, June 24, 2014, which is after the date noticed on the disqualification decision.

The claimant was hired on July 3, 2013, as a part-time weigh station operator. The claimant did not work after December 19, 2013. She told the employer she needed time off to take care of her children aged two, nine, and twelve. The employer told the claimant to let it know when she could return. The claimant has not returned. The employer still has work for the claimant.

The claimant did not return because she felt uncomfortable in her work environment and with the employer but did not complain to her supervisor. The claimant continues to work at McKinley Street Tavern. She has earned \$2,166.50 gross during 2014. The claimant provided a paystub indicating she was working as of the pay period ending May 3, 2014.

### **REASONING AND CONCLUSIONS OF LAW:**

The first issue to be considered in this appeal is whether the 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 would have timely appealed the decision if her bank had faxed the appeal on the day she gave the appeal to the bank. Therefore, the appeal shall be accepted as timely.

The next issue is whether the claimant is able and available for work.

871 IAC 24.23(8) provides:

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

(8) Where availability for work is unduly limited because of not having made adequate arrangements for child care

When an employee is spending working hours caring for children, she is considered to be unavailable for work. The claimant was devoting her time and efforts to caring for her children. As of the pay period ending May 3, 2014, the claimant appears to be able to work. She filed for unemployment insurance benefits with an effective date of May 18, 2014. She is considered to be able and available for work as of May 18, 2014.

The issue of the claimant's separation from work with this employer and whether she has requalified for benefits is remanded for determination.

**DECISION:**

The June 11, 2014, reference 03, decision is reversed. The claimant's appeal is timely. She is considered to be able and available for work as of May 18, 2014.

The issue of the claimant's separation from work with this employer and whether she has requalified for benefits is remanded for determination.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs