

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHANIE N MASSIE
Claimant

APPEAL NO. 12A-UI-07555-N

**ADMINISTRATIVE LAW JUDGE
DECISION**

CBOCS INC
Employer

OC: 03/18/12
Claimant: Appellant (2)

Section 96.4-3 – Still Employed at Same Hours and Wages/Able and Available for Work
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Claimant filed an appeal from a representative's decision dated April 19, 2012, reference 01, which denied unemployment insurance benefits effective March 18, 2012 finding that the claimant was still employed for the same hours and wages as in the original agreement of hire and therefore could not be considered to be partially unemployed. After due notice was provided, a hearing was held in Council Bluffs, Iowa, on July 19, 2012. Appearing on behalf of the claimant was Mr. Michael Massie, the claimant's designated representative/witness. Although the employer was duly notified there were no appearances by or on behalf of the employer. Claimant's Exhibit One was received into evidence.

ISSUE:

At issue in this matter is whether the claimant filed a timely appeal and whether the claimant is still employed at the same hours and wages as in the original agreement of hire.

FINDINGS OF FACT:

Having considered the evidence in the record and there being no evidence to the contrary, the administrative law judge finds that the appeal in this matter was filed beyond the ten-day statutory time limit because the notice of fact-finder's decision was delayed by the U.S. Postal Service's misdirection and not received by the claimant until after the ten-day appeal period had passed. Upon receipt of the adjudicator's determination the claimant filed an appeal.

The administrative law judge finds Stephanie Massie began her employment with CBOCS, doing business as Cracker Barrel, in 1995. The claimant continues to be employed at the time of hearing. The sole testimony in the record is that Ms. Massie was hired on a full-time basis as a dishwasher and continues to be employed in the capacity of dishwasher. For business reasons it appears that CBOCS, Inc., doing business as Cracker Barrel, at times assigns Ms. Massie less than full-time work due to slow business conditions or management decisions about the allocation of assets. Because the claimant was hired to work full time and there has

been no separation or break in employment the claimant does not work the same hours as agreed upon at the time of hire when she is assigned less than 40 hours per week by her employer. The claimant designated Michael Lee Massie to be her designated representative/witness because the claimant was scheduled to work at the time of hearing. It is Mr. Massie's belief that the scheduling of the claimant to work at the time of hearing was not unintentional.

REASONING AND CONCLUSIONS OF LAW:

There being no evidence to the contrary, the administrative law judge concludes that Mr. Massie is credible in his testimony that the late appeal in this matter was due to matters beyond the claimant's control, the misdirection in late delivery of the adjudicator's determination by the U.S. Postal Service. The administrative law judge issues a caveat to the claimant to make efforts to rectify any misidentification or misdirecting of mail by the U.S. Postal Service due to the similarity of names between the claimant and an offspring.

There being no evidence to the contrary, the administrative law judge concludes that the claimant was hired by the captioned employer, doing business as Cracker Barrel, as a full-time worker guaranteeing the claimant 40 hours or more of work each week. On an unspecified date the employer for business reasons began assigning Ms. Massie to less than full-time work on some weeks. This reduction in working hours was unilateral on the part of the employer and not at the request of the claimant. Because the evidence in the record establishes that the claimant has not been working the same hours as agreed upon in the original agreement of hire, the administrative law judge concludes that the claimant may be eligible for partial unemployment insurance benefits each week that she has claimed benefits and has met all other eligibility requirements of the Iowa Employment Security Law.

DECISION:

The representative's decision dated April 19, 2012, reference 01, is reversed. The claimant is not working at the same hours and wages as agreed upon in the original agreement of hire and is potentially eligible for partial unemployment insurance benefits, providing that she meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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