

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VICTORIA SAMSON
Claimant

APPEAL NO. 12A-UI-05238-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 03/04/12
Claimant: Appellant (1)

Section 96.4-3 - Able to and Available for Work
Section 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant, Victoria Samson, appealed an unemployment insurance decision dated April 3, 2012, reference 02, that concluded she was not available for work. A telephone hearing was held on May 31, 2012. The parties were properly notified about the hearing. Ms. Samson participated in the hearing. Dzemaal Gercic participated in the hearing on behalf of the employer.

ISSUES:

Did Victoria Samson file a timely appeal?

Was she able to and available for work?

FINDINGS OF FACT:

Victoria Samson worked full-time for the employer as a production worker from September 28, 2009, to February 28, 2012. She was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and were subject to termination after receiving ten attendance points in a 12-month period.

Ms. Samson was absent from work six times from March 2, 2011, to October 31, 2011. Starting in January 2012, she was absent from work because her normal babysitter was attending school full-time and she could not find another babysitter. Her children were eight and five years old. She had 21 absences because she did not have a babysitter to watch her children from January 23 through February 20, 2012. She called the employer to report her absences.

On February 27, 2012, Teri Wray in the human resources department called Ms. Samson and asked that she come to work. When she reported to work on February 28, 2012, she was informed that she was discharged due to excessive absenteeism because she had exceeded the points allowed under the attendance policy.

Ms. Samson filed a new claim for unemployment insurance benefits effective March 2, 2012. She still did not have child care arranged for her children that would have allowed her to work full time.

An unemployment insurance decision was mailed to Ms. Samson's last known address of record on April 3, 2012. The decision concluded she was not available for work and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by April 13, 2012.

Ms. Samson received the decision within the ten-day period for appealing the decision. She filed a written appeal on April 10, 2012, at the Workforce Development Center in Waterloo, Iowa. The representative told her that she would submit the appeal, but the Appeals Bureau never received the decision. She faxed the appeal again from the Workforce Center in Worthington, Minnesota, on May 7, 2012, after finding out the first appeal had not been received.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether Victoria Samson filed a timely appeal.

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. Iowa Code § 96.6-2. The appeal in this case is deemed timely because Ms. Samson initially filed it with the Waterloo Workforce Development Center on time on April 10, 2012, but due to an Agency error it was not transmitted to the Appeals Bureau.

The next issue in this case is whether Ms. Samson is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code § 96.4-3. The unemployment insurance rules provide that a claimant is considered unavailable for work if she has not made adequate arrangement for child care. 871 IAC 24.23(8).

The evidence shows Ms. Samson was not available for work effective March 2, 2012, because she did not have child care arranged for her children. She is not eligible for benefits.

DECISION:

The unemployment insurance decision dated April 3, 2012, reference 02, is affirmed. Victoria Samson was not available for work effective March 2, 2012

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw