

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HENRY L RANDLE**  
Claimant

**APPEAL NO. 13A-UI-08419-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HOBBY LOBBY STORES INC**  
Employer

**OC: 06/02/13**  
**Claimant: Appellant (5-R)**

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

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated June 27, 2013, reference 02, that concluded he was working enough hours to be considered employed and did not meet the availability requirements of the law. A telephone hearing was held on August 21, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Annalee Miller participated in the hearing on behalf of the employer.

**ISSUES:**

Did the claimant file a timely appeal?

Was the claimant still employed full time when he filed for unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant had worked for both Pizza Hut and the employer for several years. He filed a claim for unemployment insurance benefits effective June 2, 2013, after he was discharged from Pizza Hut. His weekly benefit amount was \$411.00.

During the weekend of June 8, 2013, the claimant worked for the employer for a total of 31.45 hours and had earnings of \$440.30. During the weekend of June 15, the claimant worked 7.55 hours on June 10 and 7.82 hours on June 12, 2013, for a total of 15.37 hours and had earnings of \$215.18. The claimant did not report his wages.

When the employer completed its protest, it stated that the claimant was still employed by the employer. The employer discharged the claimant on June 12, 2013, but that separation was never reported by either party or adjudicated.

An unemployment insurance decision was mailed to the claimant's last-known address of record on June 27, 2013. The decision concluded he was working enough hours to be considered employed and did not meet the availability requirements of the law and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by July 7, 2013.

The claimant never received the decision. On or near July 19, 2013, the claimant contacted his local Workforce Development Center to find out why he was not receiving benefits and was informed that his claim was locked due to his employment situation with the employer. He appealed the decision that day.

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

The first issue in this case is whether the claimant 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 Iowa Supreme Court has ruled that appeals from unemployment insurance decisions must be filed within the time limit set by statute and the administrative law judge has no authority to review a decision if a timely appeal is not filed. Franklin v. IDJS, 277 N.W.2d 877, 881 (Iowa 1979); Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979). In this case, the claimant's appeal was filed after the deadline for appealing expired.

The next question is whether the claimant had a reasonable opportunity to file an appeal in a timely fashion. Hendren v. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC, 212 N.W.2d 471, 472 (Iowa 1973). The claimant did not have a reasonable opportunity to file a timely appeal because he never received the decision. The appeal is deemed timely.

The next issue in this case is whether the claimant 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 not eligible for benefits for any week in which his earning exceed his weekly benefits plus \$15. 871 IAC 24.18. During the first week that the claimant filed for unemployment insurance benefits, he was fully employed by the employer. He is not eligible for benefits for that week.

Although the claimant's wages for the following week were less than the earnings limit, he was discharged from employment during that week. The employer also reported that the claimant received 40 hours of vacation pay at the time of his separation. None of this information was reported by the claimant or the employer before the hearing. The issue of whether the claimant is qualified to receive benefits based on his separation from the employer and whether he received any deductible vacation pay is remanded to the Agency.

### **DECISION:**

The unemployment insurance decision dated June 27, 2013, reference 02, is modified with no change in the outcome. The claimant was fully employed by the employer when he filed for unemployment benefits and is ineligible for benefits effective June 2, 2013. Although the

claimant should no longer be subject to an availability disqualification as of June 12, the issue regarding his separation from the employer and vacation pay has not been adjudicated. The issue of whether the claimant is qualified to receive benefits based on his separation from the employer and whether he received any deductible vacation pay is remanded to the Agency. The claim should remained locked pending the adjudication of this issues.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs