

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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L A LEASING INC
SEDONA STAFFING
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MOLINE IL 61265

Appeal Number: 04A-UI-03184-DWT
OC 06/15/03 R 04
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Nicole L. Murillo (claimant) appealed a representative's March 3, 2004 decision (reference 11) that concluded she was not qualified to receive unemployment insurance benefits because she had voluntarily quit working for Sedona Staffing (employer) for reasons that do not qualify her to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 13, 2004. The claimant responded to the hearing and provided a phone number in which to call her. The phone number the claimant provided was called, but the claimant was not available for the hearing. A message was left on the claimant's answering machine for her to contact the Appeals Section immediately. Colleen McGivney appeared on the employer's behalf.

After the hearing had been closed and the employer had been excused, the claimant contacted the Appeals Section. She made a request to reopen the hearing. Based on the claimant's

request to reopen the hearing, the administrative record, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is there good cause to reopen the hearing?

Did the claimant file a timely appeal or establish a legal excuse for filing a late appeal?

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits during the week of June 15, 2003. She reopened her claim during the week of February 1, 2004. On March 3, 2004, a representative's decision was mailed to the claimant and employer. This decision indicated the claimant was not qualified to receive unemployment insurance benefits as of January 31, 2004.

The claimant received the representative's decision, but it is not known when she received it. On March 18, 2004, the claimant filed her appeal at her local Workforce office.

A hearing notice was mailed to the parties on March 26, 2004 and informed them a hearing would be held on April 13 at 9:00 a.m. On April 7, 2004, the claimant contacted the Appeals Section and provided the phone number at which to contact her for the hearing. When the claimant was called for the hearing at 9:00 a.m. on April 13, she was not available for the hearing. A message was left on her answering machine that she needed to contact the Appeals Section immediately. The employer participated in the hearing.

The claimant did not contact the Appeals Section until after the hearing had been closed and the employer had been excused. The claimant asked that the hearing be reopened because she had been preoccupied with a home inspection at the time of the hearing. The 9:00 a.m. hearing momentarily slipped her mind. Although the claimant was home at 9:00 a.m., she was not in the room where her telephone is located and did not hear the phone ring.

REASONING AND CONCLUSIONS OF LAW:

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c).

The claimant had many activities going on at her home the morning of April 13. Unfortunately, the claimant momentarily lost track of the time for when her unemployment insurance hearing was scheduled. Even though the employer's representative was asked to make herself available for a hearing if the claimant contacted the Appeals by a certain time, the claimant did not contact the Appeals Section in a timely manner. The claimant did not establish good cause for not being available for the scheduled hearing. Her request to reopen the hearing is denied.

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's decision is mailed to the parties' last-known address, files an appeal from the decision, the decision is final. Benefits shall then be paid or denied in accordance with the

representative's decision. Iowa Code §96.6-2. Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983).

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 five days 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 record does not establish if the claimant had a reasonable opportunity to file a timely appeal.

The claimant did not establish a legal excuse for filing a late appeal. 871 IAC 24.35(2). Therefore, the Appeals Section has no legal jurisdiction to make a decision on the merits of the appeal.

DECISION:

The claimant's request to reopen the hearing is denied. The representative's March 3, 2004 decision (reference 11) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. The Appeals Section has no jurisdiction to address the merits of her appeal. This means the claimant is disqualified from receiving unemployment insurance benefits as of February 1, 2004. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

dlw/kjf