

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SCOTT A MOTTET
Claimant

APPEAL NO. 10A-UI-10396-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

AUNT MAUDE'S
Employer

**OC: 05/02/10
Claimant: Appellant (4)**

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

STATEMENT OF THE CASE:

The claimant appealed a department decision dated May 26, 2010, reference 01, that held he did not meet the availability requirements of the law as of May 2, 2010, that denied benefits. A telephone hearing was held on September 8, 2010. The claimant participated. Pat Breen, Owner/GM, participated for the employer. Claimant Exhibit A was received as evidence.

ISSUES:

Whether the claimant filed a timely appeal.

Whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant received the department decision issued May 26, 2010 with an appeal deadline date of June 5 (Saturday), which is extended to the next working day of June 7. The claimant did not appeal at that time, because he had not graduated from his degree program. The claimant submitted an appeal to his local Workforce Development office on July 23, 2010, because he had finished school and he was looking for full-time employment. The department accepted an additional claim effective July 18, 2010.

The claimant has been working as a part-time bartender for the employer the past two years while going to school full-time. The department record shows the claimant has been granted division-approved training, most recently for the period from January 10, 2010 to May 8, 2010. The claimant reported part-time earnings of \$125.00 for the week ending May 8. The claimant continues to work part-time for the employer while looking for a full-time job.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6-2 provides in pertinent part:

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. . . . 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.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. Gaskins v. Unempl. Comp. Bd. of Rev., 429 A.2d 138 (Pa. Comm. 1981); Johnson v. Board of Adjustment, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

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 record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. Franklin v. IDJS, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. Beardslee v. IDJS, 276 N.W.2d 373, 377 (Iowa 1979); see also In re Appeal of Elliott 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert 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 shows that the appellant did have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes the claimant failed to file a timely appeal.

The claimant did have a reasonable opportunity to file a more timely appeal by noting the deadline date and reading the appeal instructions. The claimant did not appeal the decision, because he had no disagreement with it at that time.

Since the claimant had received department approved training through May 8, he should not have been disqualified as of May 2. The claimant reported part-time earnings of \$125.00, which is less than his weekly benefit amount (\$119.00) plus \$15.00, and he is entitled to partial benefits for this week.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The administrative law judge further concludes the claimant meets the availability requirements of the law effective July 18, 2010.

The claimant filed an additional claim effective July 18, 2010, and he now meets the able-and-available-for-full-time requirements of the law. He has completed his degree requirements and is no longer a full-time student. He is working a part-time job while looking for full-time employment.

DECISION:

The department decision dated May 26, 2010, reference 01, is modified. The claimant failed to file a timely appeal. The claimant is eligible for benefits the week ending May 8, 2010, because of department-approved training and earning less than his weekly benefit amount plus \$15.00. The claimant is able and available for full-time employment effective July 18, 2010, and he is eligible for benefits.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw