

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHANIE L HANSEN
Claimant

APPEAL NO. 09A-UI-04776-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CELEBRITY STAFFING
Employer

**Original Claim: 08/17/08
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Stephanie L. Hansen (claimant) appealed a representative's January 8, 2009 decision (reference 05) that concluded she was not qualified to receive unemployment insurance benefits in conjunction with her employment with Celebrity Staffing (employer) for the two-week period ending January 3, 2009 due to not being able and available for work due to being on vacation. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 9, 2009. This appeal was consolidated for hearing with one related appeal, 09A-UI-03601-DT. The claimant participated in the hearing. Sarah Bonow appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant's appeal timely?

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The representative's decision was mailed to the claimant's last known address of record on January 8, 2009. The claimant does not recall receiving the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by January 18, 2009. An appeal was not filed until March 25, 2009, which is after the date noticed on the disqualification decision, when the claimant appealed an overpayment decision that had been issued on February 27, 2009 (reference 08). The claimant did recall participating in a fact-finding interview regarding her being off work on vacation.

The employer is a temporary employment firm. The claimant had an assignment with the employer that ended on or about November 26, 2008. As a result, she reopened her claim for unemployment insurance benefits effective November 23, 2008. She had some other work after

that date, which she reported on her weekly claims for unemployment insurance benefits; however, the claimant was spending time traveling and with family during the weeks ending December 27, 2008 and January 3, 2009, and she advised the employer that she was not available to accept work during those weeks. She did advise the employer on January 2 that she had returned and was available for work once more, and worked on a new assignment on January 4.

REASONING AND CONCLUSIONS OF LAW:

The preliminary issue in this case is whether the claimant timely appealed the representative's decision. Iowa Code § 96.6-2 provides that unless the affected party (here, the claimant) files an appeal from the decision within ten calendar days, the decision is final and benefits shall be paid or denied as set out by 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 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 not have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes that the failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was due to Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2), or other factor outside of the claimant's control. The administrative law judge further concludes that the appeal should be treated as timely filed pursuant to Iowa Code § 96.6-2. Therefore, the administrative law judge has jurisdiction to make a determination with respect to the nature of the appeal. See, Beardslee, supra; Franklin, supra; and Pepsi-Cola Bottling Company v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, be available for work, and be earnestly and actively seeking work. Iowa Code § 96.4-3.

The claimant requested that she not be given work during the two-week period ending January 3 due to holiday, personal, and family matters. This period is therefore a period of

voluntary unemployment, and she was not able and available for work or eligible for unemployment insurance benefits during that period. 871 IAC 24.22(2)(h), (l), (m); 871 IAC 24.23(10), (16), (25). Benefits are denied for the two-week period ending January 3, 2009.

DECISION:

The representative's January 8, 2009 decision (reference 05) is affirmed. The appeal in this case is treated as timely. The claimant was not able to work and available for work for the two-week period ending January 3, 2009. As of January 4, 2009, the claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw