

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ALENA R SOTO-DERRY**  
Claimant

**MIDWEST PROFESSIONAL STAFFING LLC**  
Employer

**APPEAL 18A-UI-11236-NM-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/03/17**  
**Claimant: Respondent (1R)**

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Iowa Code § 96.6(2) – Timeliness of Appeal  
Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.5(3)a – Failure to Accept Work

**STATEMENT OF THE CASE:**

The employer filed an appeal from the November 1, 2018, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 4, 2018. Claimant participated and testified. Employer participated through Administrative Manager Liz Wilkinson. Department’s Exhibit D-1 and employer’s Exhibits 1 through 3 were received into evidence.

**ISSUES:**

Is the appeal timely?

Was a suitable offer of work made to the claimant?

If so, did the claimant fail to accept and was the failure to do so for a good cause reason?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: On October 3, 2018, the employer attempted to contact claimant, via telephone and email, about a possible job opportunity. The employer provided details on the job, such as hours and wages, and asked claimant to contact them if she was interested in setting up an interview. The employer did not hear back from claimant and attempted to reach her again via telephone and email on October 9, 2018 to see if she was interested in interviewing.

On October 10, 2018, the employer heard back from claimant. She indicated she was working part-time for another employer. On October 16, claimant spoke with the employer indicating she was interested in interviewing for the position, as she was searching for full time work. The employer attempted to contact claimant via telephone on October 18 and via email on October 19 to confirm the interview. On October 20 claimant contacted the employer and

informed them her part-time position with the new employer had gone to full time so she was no longer interested in interviewing.

An unemployment insurance decision allowing benefits was mailed to the employer's last known address of record on November 1, 2018. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by November 11, 2018. Wilkinson, who handles unemployment decisions for the employer, was out of the office from November 4 through November 8. No one from the office was assigned the task of monitoring such mail in Wilkinson's absence.

When Wilkinson returned to the office on November 9, the decision was there. Wilkinson was confused when she opened the decision, as she has extensive experience with Iowa unemployment insurance benefits and appeals and felt a disqualifying issue was missing from the decision. Wilkinson attempted to call the IWD offices that day for clarification but could not get a clear answer on her questions. Wilkinson did not file an appeal, but attempted to contact IWD again the following week. No one from IWD was able to answer Wilkinson's questions, but she was advised to file an appeal of the November 1 decision. Wilkinson filed an appeal on behalf of the employer on November 15, 2018.

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

For the reasons that follow, the administrative law judge concludes the employer's appeal is untimely.

Iowa Code § 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 96.5, subsection 1, paragraphs "a" through "h". 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall

apply to both contributory and reimbursable employers, notwithstanding § 96.8, subsection 5.

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. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976). 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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 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 appeal was due on November 11, 2018, however, that date fell on a Sunday. IWD offices were closed in observance of Veteran's Day on November 12, making the appeal due November 13, 2018. Despite her extensive experience with unemployment insurance benefits and the appeals process, Wilkinson elected not to file an appeal by the prescribed deadline, but instead to continue to attempt to speak with someone at Iowa Workforce Development.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code § 96.6(2), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979).

Even if the appeal were timely, the employer has not shown claimant refused a suitable offer of work. The employer's communication to claimant in October 2018 was not to offer her a position, but to offer her the opportunity to interview for a position. An offer to interview for work is not the same as an actual offer of work. Since no offer of work was actually made, benefits would be allowed.

At the time of the hearing, the employer raised the issue of whether claimant was able to and available for work based on regular part-time or full-time employment. Claimant confirmed she was working for another employer on a part-time basis and has been moved to full-time status. Accordingly, the issues of whether claimant is able to and available for work or partially unemployed must be remanded to the Benefits Bureau of Iowa Workforce Development for initial investigation and determination.

**DECISION:**

The November 1, 2018, (reference 01) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

**REMAND:**

The issues of whether claimant is partially unemployed and able to and available for work are remanded to the Benefits Bureau for initial investigation and determination.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs