

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

JENNIFER L SMITH
1233 PRAIRIE VIEW DR
UNIT 378
WEST DES MOINES IA 50266

QWEST CORPORATION
c/o EMPLOYERS UNITY INC
P O BOX 749000
ARVADA CO 80006-9000

Appeal Number: 04A-UI-05527-DWT
OC 03/07/04 R 02
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
Section 96.4-3 – Ability to and Availability for Work

STATEMENT OF THE CASE:

Jennifer L. Smith (claimant) appealed a representative's April 1, 2004 decision (reference 02) that concluded she was not eligible to receive benefits because she was not able to or available to perform her regular job duties at Qwest Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 7, 2004. The claimant participated in the hearing. Lucie Hengen, a representative with Employers Unity, Inc. (employer), appeared on the employer's behalf with Tracie Sargent, the call center manager, as a witness. 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:

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

Is the claimant able to and available for work?

FINDINGS OF FACT:

The claimant started working for the employer on November 16, 2002. She worked full-time. The claimant's last day of work was September 20, 2003. The claimant then was on a medical leave of absence until January 31, 2004.

On December 8, 2003, the claimant's doctor released the claimant to work part-time. As of June 7, 2004, the claimant's doctor has not released her to work full-time. The claimant established a claim for unemployment insurance benefits during the week of March 7, 2004.

During the fact-finding interview, a representative told the claimant she would be receiving two decisions. The claimant understood one decision she would receive related to whether or not she was medically able to work which was a formality and did not really mean anything because her doctor had to complete a form for the Department.

On April 11, 2004, the claimant contacted her local Workforce office and explained she had received two decisions, reference 01 and 02, but her doctor was not available to complete the necessary paperwork she needed to get to the fact-finder. The claimant understood her call would be noted and she would receive an extension to file the necessary paperwork. On April 20, the claimant faxed an appeal letter and the form the doctor completed to the fact-finder. The claimant incorrectly assumed this would take care of everything.

When the claimant did not receive any information she was eligible for benefits, she started making inquiries. She finally learned that no one acknowledged receiving her April 20 fax. The claimant finally filed an appeal to the Appeals Section on May 13, 2004.

REASONING AND CONCLUSIONS OF LAW:

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 after the April 12, 2004 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 evidence establishes the claimant had a reasonable opportunity to file a timely appeal, but did not.

The claimant's failure to file a timely appeal, however, was not due to information she received from Agency representatives. The claimant received misinformation when she called her local Workforce Center during the week of April 11 and talked about both decisions. The representative should have at that time told the claimant to immediately file an appeal. If the claimant had mailed an appeal to the Appeals Section on April 12, her appeal would have been timely. Under 871 IAC 24.35(2), the claimant established a legal excuse for filing a late appeal. Therefore, the Appeals Section has jurisdiction to address the merits of the claimant's appeal.

Each week a claimant files a claim, she must be able to and available for work. When the claimant worked for the employer she worked full-time. As of June 7, the claimant's doctor has not released her to return to full-time work. The claimant has not established she is able to and available for work full-time during any week between March 7 and June 7, 2004.

DECISION:

The claimant established a legal excuse for filing a late appeal from a representative's April 1, 2004 decision. Therefore, the Appeals Section has jurisdiction to address the merits of the claimant's appeal. The representative's April 1, 2004 decision (reference 02) is affirmed. Since the claimant has not been released to work full-time, she is not eligible to receive unemployment insurance benefits as of March 7, 2004.

dlw/d