

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KATHI Z ATHA**  
Claimant

**APPEAL NO: 13A-UI-12638-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 01/20/13**  
**Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Active Work Search  
Iowa Code § 96.6(2) – Timely Appeal

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's October 10, 2013 determination (reference 03) that gave her a warning for failing to make an active work search for the week ending September 21, 2013. The claimant participated at the December 6 hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge concludes the warning the claimant received is not warranted.

**ISSUES:**

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

Did the claimant make an active work search for the week ending September 21, 2013?

**FINDINGS OF FACT:**

The claimant established a claim for benefits during the week of January 20, 2013. The claimant understands that each week she files a claim for benefits she is required to make a minimum of two job contacts to satisfy her work requirements. The claimant typically made eight to ten job contacts a week in an attempt to become employed.

On September 16, the claimant personally talked to a Habitat Restore representative about a job. The claimant talked to a York Solutions representative on September 18 about working for one of York Solutions clients in Minneapolis. The York Solutions representative was in Chicago and the claimant talked to the representative by phone. The next week York Solutions offered the claimant a job in Minneapolis.

When the claimant filed her claim for benefits for the week ending September 21, she reported two job contacts. After learning the claimant had one in-person job contact and one phone contact, the Department gave the claimant a warning on October 10, 2013, for failing to make a minimum of two job contacts for the week ending September 21, 2013. The October 10 determination informed the claimant that an appeal had to be filed on or before October 20, 2013.

When the October 10, 2013 determination was issued, the claimant commuted between Minneapolis where she was working and her home in Bettendorf. The claimant asked the post office to hold her mail. The claimant did not receive the October 10, 2013 determination until November 12 when she went back to Bettendorf and picked up mail that had been held for her. The claimant filed her appeal on November 13.

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

The law states that an unemployment insurance determination is final unless a party appeals the determination within ten days after the determination was mailed to the party's last known address. Iowa Code § 96.6(2). The Iowa Supreme Court has ruled that appeals 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 appeal was filed after the October 21, 2013 deadline for appealing expired. (Since October 20 was a Sunday, the deadline to file a timely appeal was automatically extended to October 21, 2013.)

The next question is whether the claimant had a reasonable opportunity to file a timely appeal. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). Since the claimant worked in Minneapolis and had the post office hold her mail, she did not have an opportunity to file a timely appeal. The day after the claimant received the October 10 determination, she filed her appeal.

The claimant established a legal excuse for filing a late appeal. The Appeals Section has jurisdiction to address the merits of her appeal.

Each week a claimant files a claim for benefits, she must make an active search for work. Iowa Code § 96.4(3). When a claimant does not make an earnest and active search for work, she is not eligible to receive benefits. 871 IAC 24.22(3). The claimant established she made an active work search during the week ending September 21. Even though she talked to a York Solutions representative over the phone on September 18, this conversation resulted in a job offer the next week. The warning the claimant received for the week ending September 21 is not warranted.

**DECISION:**

The representative's October 10, 2013 determination (reference 03) is reversed. The claimant filed a late appeal, but established a legal excuse for filing a late appeal. The Appeals Section has jurisdiction to address the merits of the claimant's appeal. The claimant made an active work search for the week ending September 21, 2013. The warning she received for this week is not warranted.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs