

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PAUL J SAMO**  
Claimant

**APPEAL NO. 08A-UI-06197-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BLACK HAWK-GRUNDY  
MENTAL HEALTH CENTER INC**  
Employer

**OC: 04/13/08 R: 03  
Claimant: Appellant (2)**

Section 96.4-3 - Able to and Available for Work  
Section 96.6-2 - Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated May 9, 2008, reference 02, that concluded he was not available for work. A telephone hearing was held on July 22, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Jody Samo. No one participated in the hearing on behalf of the employer.

**ISSUES:**

Did the claimant file a timely appeal?

Was the claimant able to and available for work?

**FINDINGS OF FACT:**

The claimant filed a new claim for unemployment insurance benefits with an effective date of April 13, 2008. Since filing for unemployment benefits, he has been seeking full-time employment and would have accepted full-time work if offered to him.

An unemployment insurance decision was mailed to the claimant's last-known address of record on May 9, 2008. The decision concluded he was not available for work and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by May 19, 2008.

The claimant received the decision within the ten-day period for appealing the decision. On the same day the claimant received a decision stating he was qualified to receive benefits based on as separation from work from the employer. He received a third decision informing him that he was disqualified and later received a decision stating that he was denied benefits due to the receipt of vacation pay. As a result of these conflicting decisions, the claimant was unsure about what to do. He contacted his local workforce office, and a representative instructed him that he did not need to file any appeal. The claimant later inquired about why he was not

receiving benefits and was informed that he had been determined unavailable for work. He promptly filed a written appeal on July 7, 2008.

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

The issue in this case is whether the claimant filed a timely appeal.

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 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 deadline for appealing expired.

The failure to file a timely appeal was due to any Agency misinformation, which under 871 IAC 24.35(2) would excuse the delay in filing an appeal. The appeal is deemed timely.

The next issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code section 96.4-3. The evidence establishes the claimant was available for work and eligible to receive unemployment insurance benefits effective April 13, 2008, provided he is otherwise qualified.

### **DECISION:**

The unemployment insurance decision dated May 9, 2008, reference 02, is reversed. The claimant was available for work and eligible to receive unemployment insurance benefits effective April 13, 2008, provided he is otherwise qualified.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/css