

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANNIE D SHERIFF
Claimant

APPEAL NO. 10A-UI-07456-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**DES MOINES INDEPENDENT
COMMUNITY SCHOOL DISTRICT**
Employer

**Original Claim: 11/22/09
Claimant: Appellant (1)**

Section 96.4-5-c – Reasonable Assurance of Returning to Work
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed a representative's April 22, 2010 decision (reference 01) that held she was not eligible to receive benefits as of March 14, 2010, when the employer was closed because of the school's spring break. A telephone hearing was held on July 7, 2010. The claimant participated in the hearing with the assistance of Phillip Collie. The employer did not respond to the hearing notice or participate in the hearing. Based on the evidence, the arguments of the claimant, 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?

Did the claimant have reasonable assurance of returning to work as a food service employee after spring break ended?

FINDINGS OF FACT:

The claimant has worked about three years for the employer. She works during the school year as a part-time food service employee. When the employer has a scheduled holiday, vacation, or is between academic school years, the claimant does not work.

The claimant established a subsequent claim for benefits during the week of November 22, 2009. Her maximum weekly benefit amount is \$125. She reopened this claim during the week of March 14, 2010. The claimant did not work the week of March 14, 2010, because the employer was closed for spring break. The claimant returned to work the week of March 21, or after spring break was over.

The claimant's last day of work for the employer for the 2009-2010 school year was June 9, 2010. Prior to June 9, the employer asked the claimant if she planned to return to work for the

employer in the 2010/2011 school year. The claimant plans to return to work for the employer as a food service employee in the upcoming school year.

On April 22, 2010, a representative's decision was mailed to the claimant and employer. This decision held the claimant ineligible to receive benefits as of March 14, 2010, because she has reasonable assurance of returning to work for the employer at the end of the scheduled spring break. The decision informed the parties the decision was final unless an appeal was filed or postmarked on or before May 2, 2010.

The claimant does not know when she received the decision. After she received the decision, she took it to her local Workforce office because she did not understand what the decision said or meant. On May 18, 2010, the claimant filed her appeal. The claimant is from Liberia and does not understand everything printed or spoken in English.

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 May 3, 2010 deadline for appealing expired. Since May 2 was a Sunday, the deadline to appeal is automatically extended to Monday, May 3, 2010.

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 did not have a reasonable opportunity to file a timely appeal because she did not understand what the April 22 decision said.

Under these facts, the claimant's appeal must be considered timely. As soon she understood what the decision said, she filed an appeal. Therefore, the Appeals Section has jurisdiction to make a decision on the merits of the claimant's appeal.

When a claimant works for a school and has reasonable assurance of returning to work after a holiday break, a vacation break, or between school years and has performed services immediately before the vacation or holiday break, she is not eligible to receive benefits based on wage credits she earned from the school when she has reasonable of assurance of returning to work after the scheduled break. Iowa Code § 96.4-5-c.

In this case, the claimant worked for the employer before the scheduled spring break. She was off a week, the week of March 14, 2010, because the school was closed. When spring break was over, the claimant returned to work the week of March 21, 2010. When school ended on June 9, the claimant did not have any work to do for the employer between the academic school years. She does, however, have reasonable assurance of returning to work when school starts again in August for the 2010-2011 school year.

In November 2008, the claimant had also established a claim for benefits. This claim was based on wages she not only earned from the employer but also from another employer. When the claimant was on a break because of holidays, vacations, or between school years, she received benefits in the previous benefit years because of the wages she had earned from another employer. When the claimant established her claim the week of November 22, 2009, she only worked for the employer. As a result, she is not eligible to receive benefits during holiday, vacation, or the summer months.

DECISION:

The representative's April 22, 2010 decision (reference 01) is affirmed. Although the claimant did not file a timely appeal, she did not have a reasonable opportunity to file a timely appeal until the decision could be explained to her. After the claimant understood what the decision meant to her, she immediately filed her appeal. The claimant is not eligible to receive benefits the week of March 14, 2010, because her unemployment insurance claim is based only on wages she has earned from the employer and the employer is was on a scheduled spring break the week of March 14. The claimant knew she would return to work when school resumed in a week, or the week of March 21, 2010. The claimant is not eligible to receive benefits as of June 6, 2010, because she has reasonable assurance of returning to work as a part-time food service employee for the employer during the 2010-2011 school years.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw