

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RAMONA M FORD
Claimant

APPEAL 17A-UI-05857-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA STAFFING INC
Employer

**OC: 11/06/16
Claimant: Respondent (1R)**

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

STATEMENT OF THE CASE:

The employer filed an appeal from the May 3, 2017, (reference 05) decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on July 5, 2017. Claimant participated. Employer participated through account manager Laurie Simmons and office manager Ruth Castor. Employer's Exhibits 1 through 2 were received.

ISSUES:

Is the appeal timely?

Did claimant fail to accept a suitable offer of work and if so, 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: An unemployment insurance decision allowing benefits was mailed to the employer's last known address of record on May 3, 2017. Employer received the decision several days after May 3, 2017, but within the appeal period. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by May 13, 2017. The appeal was not filed until June 7, 2017, which is after the date noticed on the unemployment insurance decision.

Employer is a temporary staffing firm. Claimant last worked for employer on April 7, 2017, in Albia, Iowa, when her assignment ended. There has been no initial decision by the Iowa Workforce Development Benefits Bureau on whether claimant's separation from employer disqualifies her from receiving benefits.

Employer made an offer of work to claimant via telephone on April 20, 2017. That offer included the following terms: working as a general laborer in Corydon, Iowa. The wage offered for the job is \$12.00 per hour. Claimant's average weekly wage is \$966.26. The offer was made in the claimant's second week of unemployment. Claimant declined the position because of the

commuting distance. Claimant lives in Oskaloosa, Iowa. A one way commute to Corydon from Oskaloosa is 67.6 miles.

Employer attempted to contact claimant regarding an offer of work as a general laborer in Eddyville, Iowa. Claimant was having technical difficulties with her phone. Employer never actually communicated the offer to claimant before the position was filled.

Employer made an offer of work to claimant via telephone on April 24, 2017. That offer included the following terms: first shift operator in Albia, Iowa. The wage offered for the job is \$8.50 per hour. Claimant's average weekly wage is \$966.26. The offer was made in the third week of unemployment. Claimant declined the offer due to the rate of pay.

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, 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 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. Although employer asserts it faxed an appeal of the May 3 decision to the agency on May 3, 2017, I do not find this assertion credible. Employer provided evidence that a fax was sent by employer to the Unemployment Insurance Benefits Bureau on May 3, 2017. While it is certainly within the realm of possibility that employer faxed information to the UI Benefits Bureau on May 3, I do not find it credible that the information faxed was an appeal of a May 3 decision. Employer did not provide any appeal letter that was sent with the fax on May 3, 2017. Furthermore, the decision allowing benefits was not mailed to the parties until May 3, 2017. Therefore, I do not find employer's assertion it received the decision on or before May 3 credible. I find employer's first attempt to appeal the decision was made on June 7, 2017, which is beyond the statutory deadline.

The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from unemployment insurance 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 administrative law judge concludes that failure to follow the clear written instructions 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 was timely, the claimant is still qualified to receive benefits based on these offers of work by employer.

Cases of “refusal of suitable work without good cause” are subject to a two-step analysis. A determination must be made regarding whether the work was suitable, and if it was, whether claimant has good cause for refusal. Iowa Admin. Code 871—24.24(3).

The employer has the burden of proving the offer was suitable. Iowa Code § 96.5(3)a(1) provides:

a. (1) In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, prior training, length of unemployment, and prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and any other factor which the department finds bears a reasonable relation to the purposes of this paragraph. Work is suitable if the work meets all the other criteria of this paragraph and if the gross weekly wages for the work equal or exceed the following percentages of the individual's average weekly wage for insured work paid to the individual during that quarter of the individual's base period in which the individual's wages were highest:

(a) One hundred percent, if the work is offered during the first five weeks of unemployment.

b) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.

(c) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.

(d) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

(2) However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual to accept new work under any of the following conditions:

- (1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;
- (2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;
- (3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

If the offer was suitable, the claimant has the burden to establish the offer was refused for "good cause." "Good cause for refusing work must involve circumstances which are real, substantial, and reasonable, not arbitrary, immaterial, or capricious." *Norland v. IDJS*, 412 N.W.2d 904, 914 (Iowa 1987).

In this case, only two offers of work were made to claimant by employer. Both offers were unsuitable as claimant's average weekly wage is \$966.26. Claimant was in her second and third week of unemployment when the offers were made. The average weekly wage for the first position offered is \$480 and the average weekly wage for the second position offered is \$340. The wages offered for these positions do not amount to even 50 percent of claimant's average weekly wage. Therefore, they are not considered suitable under the law and claimant is not disqualified from receiving benefits for declining the offers.

DECISION:

The May 3, 2017, (reference 05) decision is affirmed. The appeal is untimely. Furthermore, the offers of work were not suitable. Benefits are allowed, provided claimant is otherwise eligible.

REMAND:

The issue of whether claimant's separation from this employer disqualifies her from receiving benefits is remanded to the Unemployment Insurance Benefits Bureau for an initial investigation and determination.

Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

Decision Dated and Mailed
cal/scn