

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTHONY K MCINTYRE
Claimant

APPEAL NO. 10A-UI-14316-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

**OC: 06/20/10
Claimant: Appellant (2)**

Section 96.4(3) – Able and Available
Section 96.6(2) – Timeliness of Appeals

STATEMENT OF THE CASE:

Anthony McIntyre filed an appeal from a representative's decision dated August 24, 2010, reference 01, which denied benefits effective June 26, 2010 on a finding that he did not satisfy the availability requirements of the law. After due notice was issued, a hearing was held by telephone on November 29, 2010. Mr. McIntyre participated personally. The employer did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Mr. McIntyre was available for work within the meaning of the law as of June 26, 2010.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: The representative's decision that is the subject of this appeal was mailed to Mr. McIntyre at his address of record on August 24, 2010. He did not receive the decision. He did not learn of the disqualifying decision until he contacted his local office in October to find out why he was not receiving benefits. He then filed an appeal on October 18, 2010.

Mr. McIntyre has been employed by Express Services, Inc., a temporary placement service, since June of 2008. In 2010, he left an assignment with OSI before its completion because of difficulty walking. He was placed on a new assignment two days later. He has worked on various other assignments since that time, most recently on November 23 and 24, 2010. He does not have any medical problems that prevent him from performing most jobs.

REASONING AND CONCLUSIONS OF LAW:

An individual has ten days in which to appeal from a representative's decision. Iowa Code section 96.6(2). Mr. McIntyre did not receive the decision that is the subject of this appeal. Therefore, he could not have perfected his appeal within the ten days allowed. He did not learn

of the decision until informed of it by his local office. He acted with due diligence in filing an appeal immediately thereafter. For the above reasons, his appeal filed on October 18, 2010 shall be deemed timely filed.

The next issue is whether Mr. McIntyre satisfied the availability requirements of the law as of June 26, 2010. Although he left an assignment because of difficulties associated with the walking required of the job, he was placed in a new assignment two days later. He has not had to leave any other assignments as a result of being unable to perform the work. The administrative law judge is satisfied that Mr. McIntyre was able to work at a wide variety of jobs as of June 26, 2010. As such, benefits are allowed.

DECISION:

The representative's decision dated August 24, 2010, reference 01, is hereby reversed. Mr. McIntyre has satisfied the availability requirements at all times since June 26, 2010. Benefits are allowed, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw