

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GEORGE E SCHULZ

Claimant

APPEAL NO: 10A-UI-08144-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACE AMERICAN INSURANCE COMPANY

Employer

OC: 03/28/10

Claimant: Appellant (2)

Section 96.4-3 – Availability to Work Occupation Requires

Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed a representative's May 17, 2010 decision (reference 01) that held the claimant ineligible to receive benefits because he was not willing to work the hours required in his occupation. A telephone hearing was held on July 22, 2010. The claimant participated in the hearing. Prior to the hearing, the employer informed the Appeals Section the employer did not intend to participate at 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?

Is the claimant eligible to receive benefits as of March 28, 2010?

FINDINGS OF FACT:

The claimant started working for the employer in September 2006. The claimant's salary is based solely on commissions he earns. In mid-September 2009, the employer informed him that the employer would provide him certain supplies and information, such as leads. The claimant did not receive any supplies or leads. As a result, he spent his own money and time trying to develop leads so he could visit potential customers in an attempt to earn money through his commissions.

Although the claimant did not restrict the number of hours he was willing to work, he established a claim for benefits during the week of March 28, 2010, when he was not earning commissions.

On May 17, 2010, a representative's decision was mailed to the claimant and employer. This decision held the claimant ineligible to receive benefits as of April 3, 2010, because he had limited his availability for work. The decision informed the parties that the decision was final unless a party filed an appeal or an appeal was postmarked on or before May 27, 2010.

The claimant learned about the representative's decision on or about May 17, 2010. He faxed his appeal to the Appeals Section on May 27, 2010. The claimant received confirmation that his faxed appeal had been successfully transmitted. Several days later when the claimant checked with the Appeals Section, he learned the Appeals Section did not have a record of receiving his May 27 fax. The claimant faxed his appeal for a second time on June 7, 2010. The Appeals Section acknowledged receiving the June 7 appeal.

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 section 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).). An unemployment benefits contested case is commenced with the filing, by mail, facsimile or in person, a written appeal. Iowa Code section 17A-12-9, 871 IAC 26.4(1).

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 evidence establishes the claimant filed a timely appeal on May 27, 2010. Therefore, the Appeals Section has jurisdiction to address the merits of his appeal.

Each week a claimant files a claim for benefits he must be able to and available for work. Iowa Code section 96.4-3. The evidence does not establish that the claimant restricted the hours he was willing to work for the employer. Therefore, as of March 28, 2010, the claimant is eligible to receive benefits, provided he meets all other eligibility requirements.

DECISION:

The representative's May 17, 2010 decision (reference 01) is reversed. The claimant filed a timely appeal. The Appeals Section has jurisdiction to address the merits of his appeal. The claimant established that he is available to work as of March 28, 2010, and he did not limit the number of hours he would work. Therefore based on his availability to work for the employer, the claimant is eligible to receive benefits as of March 28, 2010, provided he meets all other eligibility requirements.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs