

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**MITCHELL A DEMPS**  
Claimant

**SEDONA STAFFING INC**  
Employer

**APPEAL NO. 20A-UI-00351-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/23/18  
Claimant: Respondent (1R)**

Iowa Code § 96.6-2 – Timeliness of Appeal  
Iowa Code § 96.5-3-a – Work Refusal  
Iowa Code § 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Employer filed an appeal from the May 24, 2019, reference 03, decision that granted benefits. After due notice was issued, a hearing was held on January 30, 2020. The employer did participate through Colleen McGuinty. Claimant failed to respond to the hearing notice and did not participate.

**ISSUES:**

Whether the appeal is timely?

Whether claimant refused to accept a suitable offer of work?

Whether claimant is able and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision was mailed to the employer's last known address of record on May 24, 2019. Employer did not receive the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by June 3, 2019. The appeal was not filed until January 10, 2020, which is after the date noticed on the disqualification decision.

Employer stated that they did not receive the ANDS decision in this matter. Employer further stated that none of the quarterly statements of charges they received since the date of the ANDS decision included any payments to the claimant since the date of the ANDS decision.

Employer stated that claimant quit working for employer on December 7, 2018 when claimant took full time employment with the placement employer had previously secured for claimant. As claimant hadn't notified employer of the full time hire and hadn't reported for work with employer for a period of time, employer offered claimant additional placement. Claimant refused the offer as he already had full time employment.

As claimant did not participate in the hearing, it is unknown if claimant is able and available for work although it is believed claimant was available after separation with the subsequent employer.

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

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 ten calendar days for appeal begin 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. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

Pursuant to rules Iowa Admin. Code r. 871-26.2(96)(1) and Iowa Admin. Code r. 871-24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' 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. IDJS*, 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. IDJS*, 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. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the appellant did not have a reasonable opportunity to file a timely appeal as appellant did not receive the ANDS decision.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was 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 therefore timely filed pursuant to Iowa Code Section 96.6-2, and the administrative law judge retains jurisdiction to make a determination with respect to the nature of the appeal. See, *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

The administrative law judge remands this matter to the fact finder to determine whether claimant was able and available for work. Additionally, the fact finder shall determine the separation issue in this matter.

**DECISION:**

The May 24, 2019, reference 03, decision is affirmed as to the ruling that claimant was employed elsewhere at the time of a work refusal with employer. The appeal in this case was timely, and the decision of the representative remains in effect. This matter is remanded to the fact finder for a determination of the separation issue.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

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