

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES W EPPS

Claimant

APPEAL NO. 09A-UI-03244-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

"L A LEASING INC

"SEDONA STAFFING

Employer

OC: 10/05/08

Claimant: Appellant (2)

Section 96.5-3-a – Work Refusal

Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

James Epps filed an appeal from a representative's decision dated January 8, 2009, reference 02, which held him ineligible to receive unemployment insurance benefits finding that he refused to accept suitable work on October 6, 2008. After due notice a telephone hearing was scheduled for and held on March 26, 2009. The claimant participated personally. The employer participated by Chad Baker, Administrator, and Ms. Sammy Teel, Account Manager.

ISSUES:

The issues in this matter are whether the claimant's appeal was filed timely and whether the claimant has established good cause to refuse an offer of suitable work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Mr. Epps filed an appeal beyond the ten-day statutory time limit because he did not receive a copy of the initial determination and was not made aware of the original representative's decision until a later date and then acted immediately to file an appeal.

Mr. Epps was employed by a temporary employment service beginning December 9, 2002. His last assignment through the company began on May 1, 2008 at the Plastic Products Company. That assignment ended on September 25, 2008.

Company records reflect that Mr. Epps was offered employment at the City Carton company on October 6, 2008 but that the claimant refused it because the wage was not satisfactory. The claimant had been employed at Plastic Products Company on a match to hire arrangement and had been informed that when recalled to employment at Plastic Products Company the chances were good for Mr. Epps to be offered permanent employment with that company.

It is the claimant's position that he was not offered at City Carton company and that he did not refuse it. It is claimant's position that he was unemployed at the time and would've accepted

the offer as the offer of work would have provided funds in excess of his weekly benefit amount and the claimant desired the additional income.

REASONING AND CONCLUSIONS OF LAW:

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. Board of Adjustment, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

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 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).

(2) The record shows that the appellant did not have a reasonable opportunity to file a timely appeal.

The record shows that the claimant did not have a reasonable opportunity to file a timely appeal. Mr. Epps filed the appeal as soon as possible after being made aware that a representative's decision had been made in this matter. Good cause for late filing has been shown.

Iowa Code section 96.5-3-a provides:

An individual shall be disqualified for benefits:

3. Failure to accept work. If the department finds that an individual has failed, without good cause, either to apply for available, suitable work when directed by the department or to accept suitable work when offered that individual. The department shall, if possible, furnish the individual with the names of employers which are seeking employees. The individual shall apply to and obtain the signatures of the employers designated by the department on forms provided by the department. However, the employers may refuse to sign the forms. The individual's failure to obtain the signatures of designated employers, which have not refused to sign the forms, shall disqualify the individual for benefits until requalified. To requalify for benefits after disqualification under this subsection, the individual shall work in and be paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

a. 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:

- (1) One hundred percent, if the work is offered during the first five weeks of unemployment.
- (2) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.
- (3) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.
- (4) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

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

The evidence in the record does not establish that a bona fide offer of work was made to Mr. Epps on or about October 6, 2008. The claimant testified under oath that he was not offered a temporary position at City Carton company in Davenport, Iowa and that he would've accepted the offer as he was unemployed at the time and needed funds. The claimant agrees that he desired to go back to his employment at Plastic Products Company as there was a good chance of being hired permanently at that company. It appears that Mr. Epps was willing to accept other temporary employment until offered the opportunity to return to Plastic Products Company. The claimant testified that he believes that the offer had been made to another individual as Mr. Epps does not recall the offer and would not have refused it.

871 IAC 24.24(1)a provides:

- (1) Bona fide offer of work.
 - a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

For the reasons stated herein, the administrative law judge concludes that the evidence in the record is not sufficient to establish that the claimant was made a bona fide offer of work and/or that the claimant refused the offer. The claimant testified under oath that the offer was not made to him and that he would have accepted it as he needed funds and had been previously employed by City Carton company and had no reason not to accept the offer if it had been made. The administrative law judge finds the claimant to be a credible witness and finds that his testimony is not inherently improbable.

DECISION:

The representative's decision dated January 8, 2009, reference 02, is reversed. The claimant was not made a bona fide offer of work on or about October 6, 2008. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs