

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**RAMONA A GARVEY  
BOX 122  
HOSPERS IA 51238**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**Appeal Number: 05A-UI-07480-DWT  
OC: 11/28/04 R: 01  
Claimant: Appellant (2)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.4-3 – Availability for Work  
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Ramona A. Garvey (claimant) appealed a representative's July 8, 2005 decision (reference 06) that concluded she was not eligible to receive benefits for the week ending June 11, 2005, because she worked too many hours to be considered available for work this week. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on August 8, 2005. The claimant participated in 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 available for work and eligible to receive benefits for the week ending June 11, 2005?

#### FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits during the week of November 28, 2004. The claimant accepted a new job the week ending June 11, but her first day of work was June 13, 2005. On June 10, 2005, the claimant went to an orientation her new employer provided for new employees.

On July 8, 2005, a representative's decision was mailed to the claimant. This decision informed the claimant she was not eligible to receive benefits for the week ending June 11, 2005 because she worked too many hours and was not considered unemployed. The decision also advised the claimant that if she disagreed with the decision she had to file her appeal by July 18, 2005.

The claimant received the representative's decision before July 18, 2005. After the claimant received the decision she talked to a representative at her local Workforce office. The claimant received a form to file her appeal. The claimant took the form home and completed her appeal on July 18, 2005. The claimant mailed her appeal at the Hospers' Post Office. The claimant's appeal letter was sent to Sioux City. The postmark on the envelope indicates the claimant's appeal letter was mailed from the Sioux City Postal Office the afternoon of July 19, 2005.

#### 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 §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).

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 claimant's appeal was filed on July 18 but not postmarked until July 19, 2005. A claimant has no control as to when mail is postmarked or to what distribution center mail is sent. While a postmark indicates when a letter was officially stamped or marked, the claimant's testimony that she mailed the appeal letter the same day as she completed is credible. Under these facts the claimant established that she filed a timely appeal by filing her appeal on July 18, 2005. Therefore, the Appeals Section has jurisdiction to address the merits of her appeal.

Each week a claimant files a claim for benefits, she must be able to and available for work. Iowa Code §96.4-3. The evidence reveals the claimant was busy only one day, June 10, when she attended orientation for her new job. Under these facts, the claimant was available for work during the week ending June 11, 2005. Therefore, she is eligible to receive benefits for this week.

DECISION:

The representative's July 8, 2005 decision (reference 06) is reversed. The claimant filed a timely appeal. The Appeals Section has jurisdiction to address the merits of her appeal. The claimant is eligible to receive unemployment insurance benefits because she established she was available to work the majority of the week ending June 11, 2005. The claimant is eligible to receive benefits for the week ending June 11, 2005, provided she meets all other eligibility requirements.

dlw/kjw