

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMES R FUNK**

Claimant

**APPEAL NO: 09A-UI-17572-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**REMEDY INTELLIGENT STAFFING INC**

Employer

**OC: 04/19/09**

**Claimant: Appellant (2)**

Section 96.4-3 – Availability for Work

Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant appealed a representative's September 18, 2009 decision (reference 02) that concluded he was not eligible to receive benefits as of July 19, 2009, because he limited his availability for work. A telephone hearing was held on January 13, 2009. The claimant participated in the hearing. Sadie Garland, a staffing specialist, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, 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?

As of July 19, 2009, did the claimant restrict his availability for work?

**FINDINGS OF FACT:**

The employer is a temporary employment firm. The employer assigned the claimant to work at General Mills or at Quaker Oats. When General Mills warehouse did not have work for the claimant, the employer assigned him to work at Quaker Oats. In late-July, neither General Mills nor Quaker Oats had much work for the claimant or other temporary employees to do. The claimant contacted the employer for more work. As a result of a reduced workweek, the claimant reopened his claim for benefits during the week of July 19, 2009.

On July 29, after there was only two hours of work for the claimant at General Mills or Quaker Oats, the employer tried to contact the claimant about another job. The employer was unable to work reach the claimant by phone. The next week, the week of August 2, work picked up and the claimant worked more hours but still worked less than full time. The claimant did not file any claims after the week ending August 8, 2009.

On September 18, 2009, a representative's decision was mailed to the claimant and employer. This decision indicated the claimant was denied benefits as of July 19, 2009; the claimant restricted his availability or limited the businesses he would work for. The decision informed the

parties the decision was final unless an appeal was filed or postmarked on or before September 28, 2009.

The claimant did not receive the representative's September 28, 2009 decision. The first time the claimant knew about a decision that disqualified him from receiving benefits was when he received a November 17, 2009 overpayment decision. The claimant filed an appeal on November 19, 2009.

#### **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 after the September 28, 2009 deadline for appealing expired.

The next question is whether the claimant had a reasonable opportunity to file 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 evidence establishes the claimant did not have a reasonable opportunity to file a timely appeal because he did not know about the September 18 decision until mid-November. As soon as the claimant received information about the disqualifying decision, he appealed. As a result of a delay or other action of the United States Postal Service, the claimant established a legal excuse for filing a late appeal. 871 IAC 24.35(2). Since the claimant established a legal excuse for filing a late appeal, the Appeals Section has jurisdiction to make a decision on 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 § 96.4-3. The evidence does not establish that the claimant restricted his availability to work July 19 through August 8, 2009. Instead, General Mills and Quaker Oats had a lack of work or production for the claimant to work full time during these weeks. Even though the employer tried to contact the claimant on July 29 about another job, the employer was not successful in contacting the claimant that day. The employer's inability to contact the claimant on July 29 does not make the claimant ineligible to receive benefits.

The administrative record indicates that when a fact-finding interview was held, the employer reported the claimant's failure to accept another job assignment. During the hearing, the employer wanted to present information about a September 14 employment separation. Since this was not the issue the September 18 decision addressed and the claimant has not filed any weekly claims after August 8, the incident that happened on September 14 may be relevant and addressed if or when the claimant reopens his unemployment insurance claim or establishes a new benefit year. It appears the fact-finder took information about the September 14 incident and applied it to the late July and early August reduction in work situation because neither party presented information about the claimant limiting his availability for work in late July or early August. A preponderance of the evidence establishes the claimant is eligible to receive benefits

for the weeks ending July 25 through August 8, because his hours were reduced as the result of a slowdown in work.

**DECISION:**

The representative's September 18, 2009 decision (reference 02) is reversed. The claimant did not file a timely appeal, but established a legal excuse for filing a late appeal. Therefore, the Appeals Section has jurisdiction to address the merits of his appeal. The claimant is eligible to receive benefits for the weeks ending July 25 through August 8 because he was available to work. There was a slowdown in work that reduced the claimant's hours of work these weeks.

---

Debra L. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

dlw/css