

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID B STITT
Claimant

APPEAL NO. 11A-UI-07011-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LANSINK CONSTRUCTION INC
Employer

**Original Claim: 02/27/11
Claimant: Appellant (1)**

Section 96.5-3-a – Refusal of Recall
Section 96.6-2 – Timely Appeal

STATEMENT OF THE CASE:

David B. Stitt filed an appeal from an unemployment insurance decision dated April 5, 2011, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held June 21, 2011, with Office Manager Jeff Buckley participating for the employer, Lansink Construction, Inc. Mr. Stitt did not provide a telephone number at which he could be contacted. Exhibit D-1, the claimant's appeal letter, was admitted into evidence.

ISSUES:

Can the appeal be accepted as timely?

Did the claimant refuse recall to suitable work?

FINDINGS OF FACT:

David B. Stitt was on a disciplinary suspension when his foreman called him to return to work on either March 10, or March 14, 2011. Mr. Stitt indicated that he would return. Nevertheless, he did not do so. He has not contacted the company since then.

The decision from which Mr. Stitt has appealed states that it would become final unless an appeal was postmarked by April 15, 2011, or received by the Agency by that date. The appeal was filed on May 25, 2011. Mr. Stitt had not received the prior decision.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether the administrative law judge has jurisdiction to rule on the merits of this case. He does.

Although Iowa Code section 96.6-2 gives parties only ten days from the date of a fact-finding decision to file an appeal, additional time may be granted if the delay is the fault of the U.S. Postal Service or Iowa Workforce Development. See 871 IAC 24.35. Exhibit D-1 establishes

that Mr. Stitt did not receive the April 5, 2011 decision. Therefore, his appeal on May 25, 2011, is accepted as timely.

The remaining question is whether Mr. Stitt refused recall to suitable work. It does.

Iowa Code section 96.5-3-a disqualifies an individual for benefits if the individual has refused a suitable offer of work or recall to suitable work. The evidence in this record establishes that Mr. Stitt was recalled via personal contact from his foreman. He was to return to his same job at the same rate of pay. There is no evidence in the record indicating a substantial reason for Mr. Stitt's refusal of recall. Benefits are withheld.

DECISION:

The unemployment insurance decision dated April 5, 2011, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw