

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

PHAYBOUN THONGSOM
823 E 22TH CT
DES MOINES IA 50317

MARZETTI FROZEN PASTA INC
C/O T MARZETTI
PO BOX 29163
COLUMBUS OH 43229

Appeal Number: 05A-UI-06291-DWT
OC: 04/24/05 R: 02
Claimant: Respondent (1)

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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-3-a – Refusal to Accept Offer of Work
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Marzetti Frozen Pasta, Inc. (employer) appealed a representative's May 18, 2005 decision (reference 01) that concluded Phayboun Thongsom (claimant) was eligible to receive unemployment insurance benefits as of April 24, 2005, because the employer had not made a bona fide offer of work to the claimant. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 14, 2005. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. A Laotian interpreter was excused when the claimant did not participate in the hearing. Steve Bowers, the human resource manager, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the employer file a timely or establish a legal excuse for filing a late appeal?

Did the employer make a bona fide offer of work to the claimant on April 21, 2005?

Did the claimant refuse an offer of suitable work without good cause?

FINDINGS OF FACT:

The claimant started working for the employer in January 19, 1999. The claimant worked as a full-time production worker. At various times during the claimant's employment, production work has stopped for reasons including, maintenance or construction reasons. The employer offers employees the opportunity to volunteer to work at miscellaneous jobs when there is no production work.

On April 21, 2005, the claimant attended a meeting where his supervisor told employees they could volunteer to do miscellaneous work on April 24 or 25 because there would be no production work that week. The claimant did not volunteer to do any miscellaneous work the week of April 23. The claimant attended a mandatory training on April 29. The claimant still works for the employer.

The claimant established a claim for unemployment insurance benefits during the week of April 24, 2005. He filed a claim for benefits for the week ending April 30.

On May 18, 2005, a representative's decision was mailed to the claimant and employer indicating that the claimant was eligible to receive benefits because the employer had not made a bona fide offer of work to the claimant.

The employer received the representative's decision on or before May 24, 2005. The employer appealed this decision and another employee's decision on May 24, 2005 by faxing a protest to the Appeals Section.

When the employer did not receive any hearing notice or acknowledgement of the claimant's appeal, the employer contacted the Appeals Section. After the Appeals Section asserted an appeal for the claimant had not been received, the employer faxed a second appeal on June 14, 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 before the May 28, 2005 deadline for appealing expired. The evidence establishes the employer filed an appeal on May 24, 2005. Therefore, the employer filed a timely appeal and the Appeals Section has jurisdiction to address the merits of this case.

Before a claimant can be disqualified for failing to accept work, both the offer of work and the claimant's accompanying refusal must occur within the claimant's benefit year. 871 IAC 24.24(8). The employer's offer of voluntary work for April 24 and 25 was made to the claimant on April 21 in an employee meeting. At that time, the claimant had not established a benefit year. Even though the claimant attended the April 21 meeting, it is not known if he heard or knew about the voluntary work the next week. While this was the most practical and efficient way for the employer to inform employees about work employees could do the following week, for unemployment insurance purposes the employer's offer of work was not made within the claimant's benefit year. Therefore, the claimant is eligible to receive benefits for the week ending April 30, 2005.

DECISION:

The representative's May 18, 2005 decision (reference 01) is affirmed. The employer filed a timely appeal so the Appeals Section has jurisdiction to address the merits of the appeal. The claimant is eligible to receive benefits for the week ending April 30, 2005 because the employer offered him potential work prior to the time the claimant established his unemployment insurance benefit year.

dlw/sc