

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ABBIE M THIEL
Claimant

APPEAL NO: 09A-UI-15765-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DAIRY QUEEN
Employer

OC: 09/06/09
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant appealed a representative's October 2, 2009 decision (reference 01) that concluded she was not eligible to receive benefits because she was not willing to work the number of hours required in her occupation. A telephone hearing was held on November 23, 2009. The claimant participated in the hearing. Jeff Wieland 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.

ISSUE:

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

Is the claimant available to work the same number hours she worked during the summer while she attends school?

FINDINGS OF FACT:

The claimant started working for the employer on June 9, 2008. She worked an average of 35 hours a week during the summer and during the 2008-2009 school year. During the school year she worked until close as many nights as the employer would schedule her to work. When school started in late August 2009, the claimant was not available to work days, but she was still available to work nights and would work until close. After school started the employer scheduled the claimant for fewer hours because she was not available to work as many daytime hours as she had been during the summer. As a result of being scheduled to work 15 to 25 hours instead of 35 hours a week, the claimant established a claim for benefits during the week of September 6, 2009.

The claimant did not file any weekly claims until the week ending October 3 or until after her employment ended. (The employment separation is addressed in the decision for 09-UI-15767-DWT.)

On October 2, 2009, a representative's decision was mailed to the claimant and employer. The claimant's decision was mailed to a 24th Street address that she had unexpectedly moved from in late September or early October. The decision held she was not eligible to receive benefits as of September 6, 2009, because she was not willing to work the number of hours her occupation required her to work. The decision also informed the parties an appeal had to be filed no later than October 12, 2009.

After the fact-finding interview, the claimant waited about ten days for a decision. When she did not receive a decision, she called her local Workforce office in mid-October and learned she had been denied benefits. The claimant explained that she had not received the decision and asked that a copy be mailed to her new or current mailing address. The decision was mailed again around October 12, 2009. The claimant had the decision one or two days before she went to local Workforce office and filed her appeal on October 20, 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 section 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 October 12, 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 she had to move unexpectedly. The claimant took reasonable steps to learn about the outcome of the fact-finding interview. Since the claimant filed her appeal within a couple of days of receiving the decision, she established that she filed a timely appeal from the decision had been mailed for the second time on October 12.

Each week a claimant files a claim for benefits, she must be able to and available for work. Iowa Code section 96.4-3. Since the claimant did not file any weekly claims until her employment ended, there is no legal effect in deciding her availability between September 6 and 27, 2009. However, based on evidence presented during the hearing, the claimant did not restrict the hours she was available to work after school started in late August 2009. (The claimant's eligibility to receive benefits will be decided in the decision for appeal 09A-UI-15767-DWT.)

DECISION:

The representative's October 2, 2009, decision (reference 01) is reversed, but this decision has no legal effect because the claimant did not file any claims for the weeks ending September 12 through 26, 2009. The claimant established that she filed a timely appeal from the decision that was mailed to her again on October 12, 2009.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs