

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RACHEL FLYNN
Claimant

APPEAL NO. 13A-UI-03832-VS

**ADMINISTRATIVE LAW JUDGE
DECISION**

L A LEASING
Employer

OC: 02/05/12
Claimant: Appellant (2)

Section 96.5-3-A – Work Refusal
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated October 18, 2012, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on August 12, 2013, in Davenport, Iowa. Claimant participated. Angela Flynn was a witness for the claimant. Employer participated by Colleen McGinty, Unemployment Benefits Administrator; Sammy Teel, Recruiter; and Mary Jo Talarico-Gehn, Comp Manager. The record consists of the testimony of Rachel Flynn; the testimony of Angela Flynn; the testimony of Colleen McGinty; the testimony of Sammy Teel; and the testimony of Mary Jo Talarico-Gehn. Official notice is taken of agency records.

ISSUES:

Whether the claimant filed a timely appeal; and

Whether the claimant refused an offer of suitable work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

On October 18, 2012, a representative issued a decision that held that the claimant was ineligible for unemployment insurance benefits. The decision also states that the decision would become final unless an appeal was postmarked by October 28, 2012, or received by the appeal section on that date. The claimant's appeal was postmarked on March 29, 2013. The claimant did not receive a copy of the October 18, 2012, reference 02, decision in the mail.

The employer is a temporary staffing agency. The claimant accepted an assignment on April 4, 2012, with Group O. She did shipping, receiving and light industrial work. The claimant's assignment ended on August 10, 2012. Her services were no longer needed. While working this job, the claimant worked over 40 hours per week and earned \$10.50 per hour. The claimant's average weekly wage was \$575.54.

On August 21, the employer offered the claimant a job. It was an assignment at Hagemeyer, doing the same type of work she had done at Group O. The claimant would work 40 hours per week on the first shift and be paid \$11.00 per hour. The claimant refused the offer because she could not pass the pre-employment drug screen.

REASONING AND CONCLUSIONS OF LAW:

The preliminary issue in this case is whether the claimant timely appealed the representative's decision. Iowa Code section 96.6-2 provides that unless the affected party (here, the claimant) files an appeal from the decision within ten calendar days, the decision is final and benefits shall be paid or denied as set out by the decision.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. Gaskins v. Unempl. Comp. Bd. of Rev., 429 A.2d 138 (Pa. Comm. 1981); Johnson v. Board of Adjustment, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

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 record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. Franklin v. IDJS, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. Beardslee v. IDJS, 276 N.W.2d 373, 377 (Iowa 1979); see also In re Appeal of Elliott, 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert 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 record in this case shows that the claimant did not have an opportunity to file a timely appeal because she never received a copy of the representative's decision. The claimant's appeal will be deemed timely.

The claimant is eligible for unemployment insurance benefits because the work offer is not suitable. Iowa Code section 96.5-3 states that an individual is disqualified from receiving unemployment insurance benefits if he or she fails, without good cause, to accept suitable work when offered that individual. Whether the work is suitable or not depends on a variety of factors, including whether the gross weekly wages for the work equal or exceed one hundred percent of the individual's average weekly wage for insured work paid to the individual during that quarter of the individual's base period in which the individual's wages were highest. Iowa Code section 96.5-2-a(1)(a). The claimant's average weekly wage is \$575.54. The offer was for 40 hours per week at \$11.00 per hour or \$444.00. The offer was made in the first five weeks of unemployment. It is not 100 percent of the claimant's average weekly wage for insured work paid to the claimant during that quarter of her base period in which her wages were the highest. Benefits are therefore allowed.

DECISION:

The claimant's appeal is deemed timely. The decision of the representative dated October 18, 2012, reference 02, is reversed. Unemployment insurance benefits are allowed provided claimant meets all other eligibility requirements.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css