

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACOB A SOLIZ

Claimant

APPEAL NO. 07A-UI-00986-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LABOR READY MIDWEST INC

Employer

**OC: 11/05/06 R: 01
Claimant: Appellant (2)**

871 IAC 24.1(113)a – Layoff
Section 96.4-3 – Able to and Available for Work
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated December 13, 2006, reference 01, that concluded he voluntarily quit employment without good cause on November 17, 2006. A telephone hearing was held on February 13, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. No one participated in the hearing on behalf of the employer. Exhibits A-1 and A were admitted into evidence at the hearing.

ISSUES:

Was the claimant laid off due to lack of work?

Did the claimant file a timely appeal?

FINDINGS OF FACT:

The employer is a staffing service that provides workers to client businesses on a temporary or indefinite basis. The claimant was employed for one day on November 17, 2005, and completed the work assignment and never worked again for the employer. When the claimant was hired, he did not sign a statement that he would be considered to have voluntarily quit employment if he did not contact the employer within three working days after the completion of a job assignment and request a new assignment.

The claimant filed a new claim for unemployment insurance benefits with an effective date of November 5, 2006, after he was laid off his employment with C and L Construction. Labor Ready mistakenly reported the claimant had worked on November 17, 2006, instead of 2005. The claimant had earned more than ten times his weekly benefit amount since November 17, 2005, while working for C and L Construction.

An unemployment insurance decision was sent to the claimant's last-known address of record on December 12, 2006, that concluded he voluntarily quit employment with Labor Ready without

good cause. The claimant never received the decision because he was in jail when the decision was issued. After he was released from jail on December 19, 2006, he was unaware of the disqualification until he went to the local Workforce Development Center on January 26, 2007, and was informed about the disqualification. He immediately appealed the decision that day.

The claimant is able to and available for work even though he lives in a halfway house. He has provided a doctor's statement that released him to work after he was involved in a car accident in November 2006.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant filed a timely appeal.

Iowa Code § 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last-known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

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 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 claimant did not have a reasonable opportunity to file a timely appeal because he never received it. When he was informed about the decision, he immediately appealed. The appeal is deemed timely.

The claimant worked for one day and completed his assigned work. He was not immediately offered additional work. The employer did not have the claimant read and sign a statement advising him of the requirement of Iowa Code § 96.5-1-j. He, therefore, would be considered laid off for lack of work. Furthermore, he would not be disqualified in any event because he had earned more than ten times his weekly benefit amount since November 17, 2005, while working for C and L Construction.

There are no restrictions on the claimant's availability or ability to work that would make him ineligible for work under Iowa Code § 96.4-3.

DECISION:

The unemployment insurance decision dated December 13, 2006, reference 01, is reversed.
The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css