

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARTIAL E CROSSETT**  
Claimant

**APPEAL NO. 10A-UI-16675-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AFFORDABLE REMODELING  
AND MAINTENANCE INC**  
Employer

**OC: 09/05/10**

**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Martial E. Crossett (claimant) appealed a representative's October 14, 2010 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits with regard to a supposed September 6, 2010 refusal of work from Affordable Remodeling and Maintenance, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 20, 2011. This appeal was consolidated for hearing with one related appeal, 10A-UI-16676-DT. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. During the hearing, Exhibit A-1 and Claimant's Exhibit A were entered into evidence. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Was the claimant's appeal timely or are there legal grounds under which it should be treated as timely?

Is the claimant disqualified due to refusing an offer of suitable work?

**FINDINGS OF FACT:**

The representative's decision was mailed to the claimant's last known address of record on October 14, 2010. The claimant did not receive the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by October 24, 2010, a Sunday. The notice also provided that if the appeal date fell on a Saturday, Sunday, or legal holiday, the appeal period was extended to the next working day, which in this case was Monday, October 25. The appeal was not filed until it was hand-delivered to a local Agency office and faxed to the Appeals Section on December 8, 2010, which is after the date noticed on the disqualification decision. The claimant appealed at that time because on December 2 he

had received the overpayment decision issued on November 30, 2010 (reference 02), the subject of 10A-UI-16676-DT, which was issued as a result of the October 14 disqualification decision.

The claimant works part-time, on-call for the employer as an occasional construction assistant in the employer's remodeling business. Prior to August 26 the claimant had last worked with the employer in about mid July 2010. On August 26 the employer called the claimant and indicated that there was work for the claimant the following week, to begin on or about August 30. The claimant explained that he was in the middle of remodeling his own bathroom and so was not available to assist the employer for about a week, but would be available by about September 2. The employer indicated that assistance was needed before then, so the employer would seek other assistance. The next contact by the employer to the claimant was on September 29 when the employer offered the claimant work beginning October 4, which the claimant did accept and worked.

The claimant established an unemployment insurance benefit year effective September 5, 2010 because of a layoff from his other employment. That layoff lasted two weeks, through the week ending September 18. Prior to the claim year established September 5, Agency records indicate that the claimant had a prior claim year for unemployment insurance benefits from April 12, 2009 through April 12, 2010. On August 26 there was no active or open claim for unemployment insurance benefits.

#### **REASONING AND CONCLUSIONS OF LAW:**

The preliminary issue in this case is whether the claimant timely appealed the representative's decision. Iowa Code § 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 shows that the appellant did not have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes that the appellant's failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was due to Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2), or other factor outside of the claimant's control. The administrative law judge further concludes that the appeal should be treated as timely filed pursuant to Iowa Code § 96.6-2. Therefore, the administrative law judge has jurisdiction to make a determination with respect to the nature of the appeal. See Beardslee, supra; Franklin, supra; and Pepsi-Cola Bottling Company v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

The substantive issue in this case is whether the claimant is disqualified for refusing a suitable offer of work.

Iowa Code section 96.5-3-a provides:

An individual shall be disqualified for benefits:

3. Failure to accept work. If the department finds that an individual has failed, without good cause, either to apply for available, suitable work when directed by the department or to accept suitable work when offered that individual. The department shall, if possible, furnish the individual with the names of employers which are seeking employees. The individual shall apply to and obtain the signatures of the employers designated by the department on forms provided by the department. However, the employers may refuse to sign the forms. The individual's failure to obtain the signatures of designated employers, which have not refused to sign the forms, shall disqualify the individual for benefits until requalified. To requalify for benefits after disqualification under this subsection, the individual shall work in and be paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

a. In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, prior training, length of unemployment, and prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and any other factor which the department finds bears a reasonable relation to the purposes of this paragraph. Work is suitable if the work meets all the other criteria of this paragraph and if the gross weekly wages for the work equal or exceed the following percentages 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:

(1) One hundred percent, if the work is offered during the first five weeks of unemployment.

(2) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.

(3) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.

(4) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

871 IAC 24.24(8) provides:

(8) Refusal disqualification jurisdiction. Both the offer of work or the order to apply for work and the claimant's accompanying refusal must occur within the individual's benefit year, as defined in subrule 24.1(21), before the Iowa code subsection 96.5(3) disqualification can be imposed. It is not necessary that the offer, the order, or the refusal occur in a week in which the claimant filed a weekly claim for benefits before the disqualification can be imposed.

Here, the claimant did not have an open claim at the time the offer of work was made, so any refusal would not be effective to disqualify him from benefits. Benefits are allowed, if the claimant is otherwise eligible.

**DECISION:**

The representative's October 14, 2010 decision (reference 01) is reversed. The appeal in this case is treated as timely. The claimant did not refuse a suitable offer of work within an open claim year. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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