

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ALEXANDER M CANNY
Claimant

APPEAL NO: 14A-UI-08590-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EMPLOYER SOLUTIONS STAFFING GRP
Employer

OC: 03/23/14
Claimant: Appellant (1)

Iowa Code § 96.4-3 – Able and Available for Work
Iowa Code § 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Alexander Canny (claimant) appealed an unemployment insurance decision dated August 1, 2014 (reference 03) which held that he was not eligible for unemployment insurance benefits because he is working enough hours with Employer Solutions Staffing Group (employer) to remove him from the labor market. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 8, 2014. The claimant participated in the hearing. The employer participated through Tiffany Dropps, Benefits Administrator. Exhibit D-1 was admitted into evidence.

ISSUE:

The issue is whether the claimant filed a timely appeal or established a legal excuse for filing a late appeal, and if so, whether he meets the availability requirements of the law.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: A disqualification decision was mailed to the claimant's last-known address of record on August 1, 2014. The claimant received the decision after the due date. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by August 11, 2014. The appeal was not filed until August 19, 2014 which is after the date noticed on the disqualification decision.

The claimant was hired as a part-time worker on March 28, 2014 at LeMars Industrial Corp and continues to work in that same capacity. He was not guaranteed a certain number of hours but typically works 30 hours a week and can choose to work up to 36 hours each week. The claimant also goes to school full time.

REASONING AND CONCLUSIONS OF LAW:

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last-known address. Iowa Code § 96.6-2. The unemployment insurance rules provide that if the failure to file a timely appeal was due to any Agency error or misinformation or delay or other action of the United States Postal Service, it would be considered timely. 871 IAC 24.35(2). Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973).

In the case herein, the appeal was not timely filed because the claimant did not receive the decision within the ten-day time period allowed for the appeal. He did file an appeal immediately upon receiving information he had been disqualified. Therefore, the appeal shall be accepted as timely.

The substantive issue to be determined in this case is whether the claimant meets the availability requirements of the law. For an individual to be eligible to receive benefits, he must be able to work, available to work, and earnestly and actively seeking work. Iowa Code §96.4-3; 871 IAC 24.22(2). While attending an approved training course, the claimant does not need to be available for work or actively seeking work. After completion of the department-approved training, the claimant must be able to work and actively search for work. 871 IAC 24.39(2).

However, in the case herein, the issue is whether the claimant is working enough hours to be considered employed and thus removed from the labor market. A claimant's availability is unduly limited if the employee is working to such a degree that it removes him from the labor market. See 871 IAC 24.23(23). The evidence does demonstrate that the claimant is working enough that he does not meet the availability requirements of the law. Benefits are therefore denied.

DECISION:

The claimant's appeal is timely. The unemployment insurance decision dated August 1, 2014 (reference 03) is affirmed. Benefits are denied.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/can