

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DEAN L WHITE**  
Claimant

**APPEAL NO: 13A-UI-07154-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MASTERSON PERSONNEL INC**  
Employer

**OC: 02/03/13**  
**Claimant: Appellant (4)**

Iowa Code § 96.5(3)a – Refusal to Accept Suitable Work  
Iowa Code § 96.6(2) – Timeliness of Appeal

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's March 22, 2013 determination (reference 01) that disqualified him from receiving benefits as of February 3, 2013, because he failed to accept a suitable job that the employer offered to him on February 5. The claimant participated in the hearing. Jim Robertson and Pat Walker appeared on the employer's behalf. During the hearing, Employer Exhibits One and Two were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not eligible to receive benefits as of March 10, not February 5, 2013.

**ISSUES:**

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

Did the employer offer the claimant suitable work that he declined without good cause?

**FINDINGS OF FACT:**

The claimant applied to work for the employer in May 2012. At that time the claimant indicated he had dependable transportation to work. (Employer Exhibit One.) The claimant also indicated he was willing to work 30 to 40 miles from his residence. (Employer Exhibit Two.) The employer assigned the claimant to a job at Iowa Mold and Tool that began on July 9, 2012. The job was located in Garner, the claimant's home town.

The job at Iowa Mold and Tool ended on February 1, 2013. The claimant established a claim for benefits during the week of February 3, 2013. On February 5, 2013, the employer offered the claimant a job that was 35 miles from Garner. The claimant declined this job. On March 5, 2013, the employer contacted the claimant and offered him another job that was only 20 miles from Garner. The claimant asked for time to find out if he could find a ride to that business. After talking with his friends, the claimant did not find a ride to get to that job. On March 8, the claimant informed the employer he could not accept the job because he did not have transportation to get to that job.

At the conclusion of a fact-finding interview in March, the claimant understood he would be disqualified from receiving benefits and had been overpaid benefits. On March 22, 2013, a determination was mailed to the claimant and employer. The determination disqualified the claimant from receiving benefits as of February 5, 2013. The claimant did not receive the March 22, 2013 determination.

After the claimant received a billing statement that he owed the Department \$1,674.00, he went to his local Workforce office and filed an appeal on June 17, 2013.

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

The law states that an unemployment insurance determination is final unless a party appeals the determination within ten days after the determination was mailed to the party's last-known address. Iowa Code § 96.6(2). The Iowa Supreme Court has ruled that appeals 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 appeal was filed after the April 1 deadline for appealing expired.

The next question is whether the claimant had a reasonable opportunity to file a timely appeal. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant testified that he did not receive the March 22, 2013 determination. Therefore, he established that his failure to file a timely appeal was due to an Agency error, misinformation, delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) excuses the delay in filing an appeal. The claimant established a legal excuse for filing a late appeal. Therefore, the Appeals Section has legal authority to make a decision on the merits of the appeal.

A claimant is not qualified to receive unemployment insurance benefits if he declines to accept an offer of suitable work without good cause. Iowa Code Section 96.5(3). In deciding if work is suitable one factor that must be considered is the distance of available work from the claimant's residence. Iowa Code § 96.5(3)a.

On February 5, 2013, the employer offered the claimant a job that was 35 miles from his residence. Since the claimant had just become unemployed, this job offer is deemed not suitable because of the distance from the claimant's residence. The longer a claimant remains unemployed requires the claimant to expand the area in which he is willing to work. On March 5 when the employer offered the claimant a job that was 20 miles from the claimant's residence, the claimant considered this job. The claimant does not drive even though the employer believed he had dependable transportation. (Employer Exhibit One.) After checking with friends and acquaintances in Garner, the claimant could not find a ride to get to the job 20 miles away. On March 8, the claimant declined the job because he did not have transportation to the job.

The only reason the claimant declined the March 5 offer was because he did not have way to get to work. Since he had been unemployed for a month and had no job prospects in Garner, the March 5 offer of work was suitable. While the claimant declined the March 5 job offer for personal reasons, he did not establish good cause for declining this job. Therefore, as of March 10, 2013, the claimant is not qualified to receive benefits.

**DECISION:**

The representative's March 22, 2013 determination (reference 01) is modified in the claimant's favor. The claimant established a legal excuse for filing a late appeal. The Appeals Section has jurisdiction to address the merits of the claimant's appeal. The claimant refused the employer's February 5 offer of work for good cause. The employer's March 5 offer of work was suitable for the claimant and he declined for reasons that do not qualify him to receive benefits as of March 10, 2013. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs