

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELLE M MCGREW
Claimant

APPEAL NO. 08A-UI-08632-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DYBALL ACOUSTICAL INC
Employer

OC: 06/15/08 R: 03
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

Dyball Acoustical (employer) appealed a representative's September 16, 2008 decision (reference 01) that concluded Michelle McGrew (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 13, 2008. The claimant participated personally. The employer participated by Ron Dyball, Business Owner. The claimant offered and Exhibit A was received into evidence. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the appeal was filed in a timely manner and, if so, whether the claimant refused an offer of suitable work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer left the claimant a voice mail and sent the claimant a letter she never received asking her to return to work at no specific date.

A disqualification decision was mailed to the employer's address of record on September 16, 2008. The employer did not receive the decision until September 27, 2008. The employer faxed an appeal on the date it received the decision.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the employer's appeal is timely. The administrative law judge determines it is.

Iowa Code section 96.6-2 provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The employer did not have an opportunity to timely appeal the fact-finder's decision because the decision was not received until after the date it was due. Without 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). The employer timely appealed the decision the same day it received it. Therefore, the appeal shall be accepted as timely.

The next issue is whether the claimant refused an offer of suitable work. For the following reasons the administrative law judge concludes she did not.

871 IAC 24.24(1)a provides:

(1) Bona fide offer of work.

a. In deciding whether or not a claimant failed to accept suitable work, or failed to apply for suitable work, it must first be established that a bona fide offer of work was made to the individual by personal contact or that a referral was offered to the claimant by personal contact to an actual job opening and a definite refusal was made by the individual. For purposes of a recall to work, a registered letter shall be deemed to be sufficient as a personal contact.

The employer left a telephone message and sent a letter the claimant never received. No offer of work was made to the claimant. The claimant is qualified to receive benefits because no offer of suitable work was made to the claimant.

DECISION:

The representative's September 16, 2008 decision (reference 01) is affirmed. The employer's appeal is timely. The claimant is qualified to receive benefits because no offer of suitable work was made to the claimant.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs