

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIE L KNIGHT
Claimant

APPEAL NO. 13A-UI-08727-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVENTURE STAFFING & PROFESSIONAL
Employer

OC: 07/08/12
Claimant: Appellant (1)

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 June 16, 2013, reference 05, that concluded she was not available for work. A telephone hearing was held on September 3, 2013. The parties were properly notified about the hearing. The claimant failed to participate in the hearing because she did not answer her phone at the time of the hearing. Deb Miller and Gail Anderson participated in the hearing on behalf of the employer and agreed that a decision could be made based on the information in the file.

ISSUE:

Was the appeal in this case filed timely?

FINDINGS OF FACT:

An unemployment insurance decision was mailed to the claimant's last-known address of record on June 26, 2013. The decision concluded she was not available for work and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by July 6, 2013.

The claimant received the decision within the ten-day period for appealing the decision. She filed a written appeal on July 29, 2013, which is after the time period for appealing had expired.

The claimant called the Appeals Section at about 10:20 p.m. regarding her hearing and contended she had received documents from Iowa Workforce Development that the hearing was at 3:00 p.m. She was asked to submit the documents by fax by 5:00 p.m. to establish good cause for not being available. The documents faxed acknowledge that the hearing notices correctly listed the hearing time as 8:30 and 8:35 a.m.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the claimant has established good cause under 871 IAC 26.8(3) to reopen the hearing. The claimant was given the opportunity to submit documents supporting

her contention that she had been notified that the hearing was at 3:00 p.m. She failed to provide documentation establishing that, and therefore, good cause to reopen the hearing has not been shown.

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

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 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). There is no evidence that the claimant did not have a reasonable opportunity to file a timely appeal.

The failure to file a timely appeal was not due to any Agency error or misinformation or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) would excuse the delay in filing an appeal. Since the appeal was not filed timely, there is no jurisdiction to make a decision on the merits of the appeal.

DECISION:

The unemployment insurance decision dated June 16, 2013, reference 05, is affirmed. The appeal in this case was not timely, and the unemployment insurance decision denying the claimant benefits remains in effect.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css