

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY J RAYMOND
Claimant

APPEAL NO. 09A-UI-16186-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES STAFFING SERVICES INC
Employer

OC: 06/14/09
Claimant: Appellant (2)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Mary Raymond filed an appeal from the August 17, 2009, reference 01, decision that denied benefits effective June 14, 2009 based on an Agency conclusion that she could not be considered partially unemployed from employment with the above employer. After due notice was issued, a hearing was held by telephone conference call on January 12, 2010. Ms. Raymond participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. The hearing in this matter was consolidated with the hearing in Appeal Number 09A-UI-16187-JTT. Exhibit A and Department Exhibits D-1 through D-4 were received into evidence.

ISSUES:

Whether there is good cause to deem timely Ms. Raymond's late appeal from the August 17, 2009, reference 01, decision denying benefits. The administrative law judge concludes there is good cause to deem the appeal timely.

Whether Ms. Raymond was partially unemployed from full-time employment with the above employer during the period of June 14, 2009 through August 1, 2009. The administrative law judge concludes she was.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On August 17, 2009, Workforce Development mailed a copy of the reference 01 decision to Mary Raymond's last-known address of record. The decision denied benefits effective June 14, 2009 based on an Agency conclusion that Ms. Raymond could not be considered partially unemployed from DES Staffing Services, Inc. (employer account number 242212).

The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by August 27, 2009. Ms. Raymond received the decision in a timely manner, prior to the deadline for appeal. Ms. Raymond did not file an appeal from that decision until after she received the October 20, 2009, reference 03, decision that said she was overpaid

\$1,288.00 for the six-week period between June 14, 2009 and August 1, 2009, based on the earlier decision that disqualified her for benefits. On October 26, 2009, Ms. Raymond completed an appeal form and delivered it to the staff at the Des Moines Workforce Development Center.

In connection with the entry of the August 17, 2009, reference 01, disqualification decision, a Workforce Development representative conducted a fact-finding interview on August 14, 2009. Ms. Raymond did not participate. Amy Potratz, Human Resources Representative for DES Staffing Services, Inc. (employer number 294212) represented the employer. Ms. Potratz told the Workforce Development representative that Ms. Raymond had been on assignment at Acme as of June 15, 2009, was still in an assignment at Acme, and that there had not been any "big gaps" in the employment since Ms. Raymond had started the assignment. The Workforce Development representative documented that Ms. Raymond had commenced working for the employer on June 1, 2006.

Ms. Raymond did not file an earlier appeal from the August 17, 2009, reference 01, decision because she thought the matter had been resolved in her favor by means of the August 19, 2009, reference 02, decision that allowed benefits, *provided she was otherwise eligible*. That matter has concerned employer Staffing Professionals, L.L.C. (employer account number 366527). Ms. Raymond had participated in an August 18, 2009, fact-finding interview with Amy Potratz, Human Resources Representative with Staffing Professionals, L.L.C. The fact-finding interview focused on Ms. Raymond's work in a full-time assignment at Acme. Both Ms. Raymond and Ms. Potratz told the Workforce Development representative that Ms. Raymond had been on a temporary layoff from her assignment at Acme, but that she was back to work at the time of the fact-finding interview. The Workforce Development representative documented that Ms. Raymond had commenced working for the employer on June 1, 2006.

DES Staffing Services, Inc. (employer number 294212) and Staffing Professionals, L.L.C. (employer account number 366527) were for all relevant purposes the same employer.

Ms. Raymond had indeed started working for the employer in 2006 and had worked in several assignments before she was placed in a full-time assignment at Acme in July 2007. Effective June 2, 2009, the employer and/or the client business, reduced Ms. Raymond's work hours. During the week of May 31-June 6, Ms. Raymond was scheduled to work just two days. During the week of June 7-13, Ms. Raymond was not scheduled to work at all. During the week of June 14-20, Ms. Raymond was scheduled to work two days. At that point, Ms. Raymond decided to apply for unemployment insurance benefits.

Ms. Raymond established a claim for benefits that was effective June 14, 2009. Workforce Development calculated Ms. Raymond's weekly benefit to be \$292.00. This would be the full amount Ms. Raymond would receive, provided she met all eligibility requirements and had no wages for the week. For the week ending June 20, 2009, Ms. Raymond worked approximately 15 hours, reported \$118.00 in wages and received \$247.00 in unemployment insurance benefits. For the week ending June 27, 2009, Ms. Raymond worked seven hours, reported \$56.00 in wages and received \$292.00 in unemployment insurance benefits. For the week ending July 4, 2009, Ms. Raymond worked 15 hours, reported \$120.00 in wages and received \$245.00 in benefits. For the week ending July 11, 2009, Ms. Raymond worked 49 hours, reported \$395.00 in wages and received no unemployment insurance benefits. For the week ending July 18, 2009, Ms. Raymond worked 32 hours, reported \$256.00 in wages and received \$109.00 in benefits. For the week ending July 25, 2009, Ms. Raymond worked 24 hours, reported \$192.00 in wages and received \$173.00 in benefits. For the week ending August 1,

2009, Ms. Raymond worked approximately 37 hours, reported \$293.00 in wages and received \$72.00 in benefits. During the week ending August 1, 2009, Ms. Raymond returned to full-time employment, received no benefits, and discontinued her claim. In total, Ms. Raymond received \$1,138.00 in regular benefits. For each of the six weeks Ms. Raymond received regular unemployment insurance benefits, she would have received an additional \$25.00 in federal stimulus benefits. The total amount of the stimulus benefits was \$150.00. Thus the total benefits disbursed to Ms. Raymond were \$1,288.00.

REASONING AND CONCLUSIONS OF LAW:

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 ten-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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).

An appeal submitted by mail is deemed filed on the date it is mailed as shown by the postmark or in the absence of a postmark the postage meter mark of the envelope in which it was received, or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion. See 871 AC 24.35(1)(a). See also Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is

deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See 871 IAC 24.35(1)(b).

The evidence in the record establishes that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme 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 while Ms. Raymond did have a reasonable opportunity to file a timely appeal from the August 17, 2009, reference 01, decision, but did not do so because she reasonably concluded that the matter had been addressed and resolved in her favor through the August 18, 2009 fact-finding interview and the August 19, 2009, reference 02, decision concerning the exact same issue and employment. At best, the Workforce Development issued two contradictory decisions concerning the same issue and employment. The administrative law judge concludes that Workforce Development introduced confusion into the process that caused Ms. Raymond's inaction until she received the overpayment decision. Because Ms. Raymond had returned to work, her receipt of the overpayment decision would have been her earliest indication that the matter had not in fact been resolved in her favor. The administrative law judge concludes there is good cause to deem the appeal timely. The administrative law judge has jurisdiction to rule on the merits of the appeal.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

An individual shall be deemed *partially unemployed* in any week in which, while employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars. Iowa Code section 96.19(38)(b).

The evidence indicates that Ms. Raymond was partially unemployed from June 14, 2009 through July 4, 2009 and July 12, 2009 through August 1, 2009. Ms. Raymond was eligible for benefits for those weeks, provided she met all other eligibility requirements. The employer's account may be charged for those benefits.

DECISION:

There is good cause to deem the claimant's appeal timely. The Agency representative's August 17, 2009, reference 01, decision is reversed. The claimant was partially unemployed from June 14, 2009 through July 4, 2009 and July 12, 2009 through August 1, 2009. The claimant was eligible for benefits for those weeks, provided she met all other eligibility requirements. The employer's account may be charged for those benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css