

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DANIEL GALLEGOS

Claimant

APPEAL NO: 14A-UI-10510-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC

Employer

OC: 11/24/13

Claimant: Appellant (4)

Iowa Code § 96.4-3 - Able and Available for Work

Iowa Code § 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

Daniel Gallegos (claimant) appealed an unemployment insurance decision dated September 18, 2014, (reference 03), which held that he was not eligible for unemployment insurance benefits because he was working at the same hours and wages with Advance Services, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 6, 2014. The claimant participated in the hearing. Anna Pottebaum interpreted on behalf of the claimant. The employer did not comply with the hearing notice instructions and did not call in to provide a telephone number at which a representative could be contacted, and therefore, did not participate. 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 qualifies for unemployment insurance benefits.

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 September 18, 2014. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by September 28, 2014. The appeal was not filed until October 8, 2014, which is after the date noticed on the disqualification decision. The claimant established a fax transmission report showing he tried to fax in the appeal at a local office on September 23, 2014.

The claimant has worked for the employer for several years. He filed for weekly unemployment benefits for a three-week period ending September 13, 2014. The employer laid him off temporarily due to lack of work but the claimant was able and available to work. The claimant returned to full-time work as of September 15, 2014.

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 claimant attempted to file an appeal on September 23, 2014, when he faxed it to a local office. The appeal was not forwarded to the Appeals Bureau and he filed a second appeal on October 8, 2014. Therefore, the appeal shall be accepted as timely.

The substantive issue to be determined is whether the claimant is still employed with the employer for the same hours and wages as contemplated in the original contract of hire. The availability requirement is satisfied when a claimant is willing, able and ready to accept suitable work, does not have good cause to refuse the work and is genuinely attached to the labor market. See 871 IAC 24.22(2).

The claimant was able and available to work for the three-week period ending September 13, 2014, but the employer had no work available. He returned to work as of September 15, 2014, and continues to be employed full-time since that date. Consequently, he qualifies for unemployment benefits for the three-week period ending September 13, 2014.

DECISION:

The claimant's appeal is timely. The unemployment insurance decision dated September 18, 2014, (reference 03), is modified in favor of the appellant. The claimant qualifies for benefits for three weeks ending September 13, 2014, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs