

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MRYOSHI L HOLDEN**  
Claimant

**APPEAL NO: 09A-UI-06919-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**L A LEASING INC  
SEDONA STAFFING**  
Employer

**OC: 03/15/09**

**Claimant: Appellant (4)**

Section 96.4-3 - Availability for Work  
Section 96.3-3 - Eligibility for Partial Unemployment Insurance Benefits  
Section 96.7-2-a(2) – Charges Against Employer’s Account  
Section 96.6-2 - Timeliness of Appeal

**STATEMENT OF THE CASE:**

Mryoshi L. Holden (claimant)) appealed a representative’s April 10, 2009 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits in connection with her employment with L A Leasing, Inc./Sedona Staffing (employer). After hearing notices were mailed to the parties’ last-known addresses of record, a telephone hearing was held on June 1, 2009. The claimant participated in the hearing. Colleen McGuinty appeared on the employer’s behalf and presented testimony from one other witness, Anna Nielsen. During the hearing, Exhibit A-1 was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Was the claimant’s appeal timely or is there a legal excuse under which it should be treated as having been timely? Is the claimant able and available for work provided by the employer on a basis as to be eligible for full or partial benefits? Is the employer’s account subject to charge?

**FINDINGS OF FACT:**

The representative’s decision was mailed to the claimant’s last-known address of record on April 10, 2009. However, the claimant had moved and did not receive the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by April 20, 2009. The appeal was not filed until May 1, 2009, which is after the date noticed on the disqualification decision.

The claimant established an unemployment insurance benefit year effective March 15, 2009. Her weekly benefit amount was calculated to be \$82.00, based on wage credits during the high quarter of her base period, which was the third quarter of 2008, which did not include any wage credits from the employer.

The employer is a temporary employment firm. The claimant began taking assignments with the employer in April 2007, but did not work any assignments from the employer during her base period, which was from October 1, 2007 through September 30, 2008. She began an assignment with the employer on December 8, 2008 with a Waterloo, Iowa business client. She continues to work in that assignment. It was only anticipated that the work would be part time, approximately 20 to 25 hours per week, working only Monday through Thursday, 7:00 a.m. until done, usually between 11:00 a.m. and 3:00 p.m., but there are weeks when the business client does not have that much work available for the claimant.

She had been filing weekly claims and reporting her wages as earned. Since the establishment of her claim year effective March 15, there has been one week in mid-April when the claimant was sick for three days, so could not work the full hours that might have been available for her that week.

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

The preliminary issue in this case is whether the claimant timely appealed the representative's decision. Iowa Code § 96.6-2 provides that unless the affected party (here, the claimant) files an appeal from the decision within ten calendar days, the decision is final and benefits shall be paid or denied as set out by the decision.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the 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).

Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa 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 the appellant did not have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was due to Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2), or other factor outside of the claimant's control. The administrative law judge further concludes that the appeal should be treated as timely filed pursuant to Iowa Code § 96.6-2. Therefore, the administrative law judge has jurisdiction to make a determination with respect to the nature of

the appeal. See, Beardslee, supra; Franklin, supra; and Pepsi-Cola Bottling Company v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

The primary issue in this case is whether the claimant was eligible for full or partial unemployment insurance benefits effective March 15, 2009, and thereafter, for weeks in which her wages were less than \$97.00 (\$82.00 plus \$15.00).

Iowa Code § 96.3-3 provides:

3. Partial unemployment. An individual who is partially unemployed in any week as defined in section 96.19, subsection 38, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

Iowa Code § 96.19-38-b provides in part:

b. 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.

The rules interpreting these sections in defining a "week of unemployment" state that this is "a week in which an individual performs less than full-time work for any employing unit if the wages payable with respect to such week are less than a specified amount," which would be the partial earnings allowance described above. 871 IAC 24.1(138).

The claimant had weeks since filing her claim in which she worked less than the time hours she had been working during her base period and in which she earned less than \$97.00. The claimant was available all hours provided for her other than the week in mid-April. She meets the definition of partially unemployed and is available for work as required by law, other than the week in mid-April, the week ending April 18, when she was not available the majority of the workweek due to being sick. 871 IAC 24.22(1); 871 IAC 24.22(2)(h); 871 IAC 24.23(1). She is qualified to receive unemployment insurance benefits in weeks in which she works less than 40 hours and has earnings less than \$97.00, so long as she is otherwise available for work that is provided by the employer.

The next issue is whether the employer's account is subject to charge for benefits paid to the claimant.

Iowa Code § 96.7-2-a(2) provides in part:

(2) The amount of regular benefits . . . paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during

the individual's base period, benefits paid to the individual shall not be charged against the account of the employer.

The employer is not presently chargeable for benefits paid to the claimant because it is not a base period employer on the claim. If in the future the employer becomes a base period employer in a later benefit year, the employer's account will be exempt from charge under this statute as long as the employer continues to provide the claimant with the same employment of 20 or more hours of work per week.

**DECISION:**

The representative's April 10, 2009 decision (reference 01) is modified in favor of the claimant. The claimant is qualified to receive unemployment insurance benefits effective March 15, 2009, in weeks in which she works less than 40 hours and has earnings of less than \$97.00, other than she is not eligible to receive partial benefits during the week ending April 18, 2009, as she was not available for work the majority of that week. The employer's account is not subject to charge in the current benefit year.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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