

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARY JANE STRIBE**  
Claimant

**APPEAL NO. 11A-UI-10851-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MANPOWER INC OF DM**  
Employer

**OC: 06/26/11  
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 August 1, 2011, reference 01, that concluded she was no longer considered temporarily unemployed and was required to actively seek work by contacting two employers per week. A telephone hearing was held on September 13, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Katie Wolff participated in the hearing on behalf of the employer. Exhibit A-1 was admitted into evidence at the hearing.

**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 August 1, 2011. The decision concluded she was required to actively seek work and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by August 11, 2011.

The claimant left town before the decision was received at her residence. She was away from her home for about two weeks and did not return home until August 16. She discovered the decision in her mail on the evening of August 16 and faxed in an appeal the next day. The claimant was filing weekly claims for benefits during the time period she was out of town. She did not make any arrangements regarding her mail while she was gone to make sure important unemployment-related documents were handled.

The employer has certified that the claimant has no definite return date to regular employment and has requested that the claimant not be exempt from looking for work.

**REASONING AND CONCLUSIONS OF LAW:**

The 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 section 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 about a week 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). An unemployment insurance claimant receiving benefits must take steps to make sure important unemployment-related documents are handled as part of the obligation to be able to and available for work. She had had 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.

Even if the appeal were timely, I would conclude the claimant should not be exempt from looking for work and accepting suitable work when offered even if she had been in past years. She is working for a different employer who has certified that the claimant has no definite return date to regular employment and has requested that the claimant not be exempt from looking for work.

**DECISION:**

The unemployment insurance decision dated August 1, 2011, reference 01, is affirmed. The appeal in this case was not timely, and the unemployment insurance decision requiring the claimant to actively seek work remains in effect.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/css