

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EDNA F COWELL

Claimant

APPEAL NO. 12A-UI-08278-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

QPS EMPLOYMENT GROUP INC

Employer

OC: 12/18/11

Claimant: Appellant (1)

Section 96.4-3 – Able and Available
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated May 29, 2012, reference 08, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 18, 2012. Claimant participated. Employer participated by Rhonda Hester, the human resources supervisor, and Marcie Porterfield, the branch manager. The record consists of the testimony of Edna Cowell; the testimony of Rhonda Hester; and the testimony of Marcie Porterfield.

ISSUES:

Whether the claimant filed a timely appeal; and

Whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

On May 29, 2012, a representative issued a decision that held that the claimant was ineligible for unemployment insurance benefits. The decision also states that the decision would become final unless an appeal was postmarked by June 8, 2012, or received by the Appeals Section on that date. The claimant's appeal was filed on July 10, 2012. The claimant was out of the country and in the Philippines until May 20, 2012. She had difficulty getting her mail after this lengthy absence.

The employer is a temporary staffing agency. The claimant began an assignment on February 13, 2012, with a manufacturing company. Her last day of work was March 15, 2012. The claimant told the employer that she had to return to the Philippines in order to comply with immigration requirements for her daughter. The claimant said she would be gone for three weeks. The employer agreed to take the claimant off the schedule. By April 5, 2012, the

claimant had not contacted the employer and requested another assignment. She was considered to have quit as of that date.

The claimant returned on May 20, 2012. She was not able to return to work due to issues concerning her daughter.

REASONING AND CONCLUSIONS OF LAW:

The preliminary issue in this case is whether the claimant timely appealed the representative's decision. Iowa Code section 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).

Since the claimant was abroad she had no reasonable opportunity to assert an appeal while she was absent. Although the claimant returned to the United States she had difficulty obtaining her mail in a timely manner. Under these circumstances, the appeal will be considered as timely.

The next issue is whether the claimant was able and available for work from March 18, 2012, through May 26, 2012. In order to receive unemployment insurance benefits, a claimant must be able and available for work. A claimant is disqualified for being unavailable for work if she is out of town for personal reasons for the major portion of the workweek and is not in the labor market. The claimant was not only out of town, but out of the country. She then was unable to work due to attending to personal matters involving her child. The claimant is therefore disqualified from receiving benefits from March 18, 2012, through May 26, 2012.

DECISION:

The decision of the representative dated May 29, 2012, reference 08, is affirmed. The claimant is not eligible for unemployment insurance benefits from March 18, 2012, through May 26, 2012, because she was not able and available for work.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css