

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CAMERON R CUROE
Claimant

APPEAL NO. 14A-UI-02600-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WILSON MILLER INC
Employer

OC: 06/16/13
Claimant: Appellant (2)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated July 18, 2013, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a hearing was held on March 31, 2014, by telephone conference call. The claimant participated personally. Employer participated by Brian Wilson, owner. Official notice is taken of agency records.

ISSUES:

Whether the claimant filed a timely appeal; and
Whether the claimant was 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 July 18, 2013, 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 July 28, 2013, or received by the Appeals Section on that date. The claimant's appeal was filed on March 7, 2014. The claimant did not receive a copy of the decision that ruled he was ineligible for unemployment insurance benefits.

The employer is a restaurant and bar located in Forest City, Iowa. The claimant worked for the employer as a bartender. He was off work from June 15, 2013 to July 15, 2013. The reason the claimant was off work was that the bar part of the restaurant was closed because the employer lost its liquor license. The license was lost because the claimant had served alcohol to a minor.

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). The record shows that the appellant did not have a reasonable opportunity to file an appeal postmarked as timely because the claimant did not receive a copy of the representative's decision.

871 IAC 24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

The claimant is eligible for unemployment insurance benefits. The representative set this decision up as an able and available case and held that the claimant was not willing to work during the times when work in his occupation was available. After carefully considering this matter, the administrative law judge believes that this case is best understood as a layoff. The claimant was off work because the employer had no work available. The claimant worked as a bartender and was off work because the employer lost its liquor license. The liquor license was lost because the claimant sold liquor to a minor. The claimant was available to work but was not able to work because the employer did not offer work to him. A layoff is a non-disqualifying event and therefore the claimant is eligible for unemployment insurance benefits.

DECISION:

The decision of the representative dated July 18, 2013, reference 01, is reversed. The claimant is eligible for unemployment insurance benefits effective June 16, 2013.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs