

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JENNIFER D GENTILE
Claimant

APPEAL NO. 14A-UI-07999-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 05/04/14
Claimant: Appellant (2)**

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 June 6, 2014, reference 05, that concluded she was not available for work. A telephone hearing was held on August 26, 2014. The claimant participated in the hearing.

ISSUES:

Did the claimant file a timely appeal?

Was the claimant available for work?

FINDINGS OF FACT:

The claimant filed a new claim for unemployment insurance benefits effective May 4, 2014, after her employment with Risk Assessment And Management Inc. ended.

Since filing for unemployment insurance benefits, the claimant has been able to work, available for work, and actively seeking full-time employment for which she is suited. She has not placed any restrictions on her available for work.

The claimant received two conflicting decisions regarding her availability for work. A decision dated June 5, 2014, reference 04, stated that she was available for work and eligible for benefits effective May 4, 2014. A decision dated June 5, 2014, reference 05, stated that she was not available for work because she was unwilling to work the number of hours required by her occupation and was ineligible for benefits effective May 4, 2014. The claimant received this decision about the same time and was confused by the conflicting decisions. The claimant called the telephone number listed on the bottom of the decision every day for over a week but no one answered. The claimant left messages requesting a call back. She received one return call but she was not able to take the call.

The claimant then received notice of a hearing with Risk Assessment And Management Inc., which was held on June 19, 2014. A short time later, the claimant received a decision stating

she was eligible for benefits. She believed all the issues had been resolved. The claimant, however, discovered that she still was not receiving benefits, she attempted calling the number she had for the Claims Section but never was able to speak to anyone and her voice mail messages were not returned.

In late July, the claimant received a printout in the mail from the Claims Section showing the decisions that had been issued in her case and stating that she should appeal decision reference 05, which was preventing her from receiving benefits. She immediately appealed the decision in a letter postmarked August 4, 2014.

REASONING AND CONCLUSIONS OF LAW:

The first 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 § 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 after the deadline for appealing expired.

The failure to file a timely appeal was due to confusion caused by the Agency, which under 871 IAC 24.35(2) would excuse the delay in filing an appeal. The claimant received conflicting decisions, repeatedly attempted to contact the Claims Section to answer her questions, but received no explanation about why she was denied until she received the document in the mail at the end of July. She promptly filed her appeal. Typically, the Claims Section issues a summary decision in a situation like this, where multiple decisions are issued that might cause confusion, but that was not done in this case. The appeal should be treated as timely.

The issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code § 96.4-3. The evidence establishes that as of May 4, 2014, the claimant was able to and available for work without any restrictions on the hours she is willing to work. She has been looking for full-time work.

In order for the claimant to receive future benefits, she will have to reopen her claim since she has not filed any weekly claims since the week ending July 5, 2014.

DECISION:

The unemployment insurance decision dated June 6, 2014, reference 05, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

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