

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319**

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**TARMIA L WEEKS**

Claimant,

and

**IOWA WORKFORCE**

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**HEARING NUMBER: 12B-EUCU-00012**

**EMPLOYMENT APPEAL BOARD  
DECISION**

**NOTICE**

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION: 96.3-5-B, 96.6-2**

**DECISION**

The Claimant appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES, as to the timeliness issue, and REMANDS, as to the merits,** as set forth below.

**FINDINGS OF FACT:**

The notice of hearing in this matter was mailed January 25, 2012. The notice set a hearing for February 14, 2012 for which the issues of timeliness and whether the claimant was eligible for training extension benefits after January 7, 2012 were to be determined.

During the hearing, the claimant acknowledged and verified her last address of record to which the December 10, 2010, claims representative's decision, Ref. 04, was mailed. She received the decision and immediately went to Iowa Workforce Development Center to inquire about the decision. The claimant was advised that she did not have to appeal the decision since she had been granted benefits through January 7, 2012. The claimant did not contact Workforce again until she received another notification sometime in January of 2012 indicating that she must submit her school schedule.

Her benefits discontinued and she appealed on January 11, 2012. The administrative law judge found the claimant's appeal to be untimely, so no testimony on the merits was taken because the administrative law judge lacked jurisdiction to decide the merits.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 10A.601(4) (2011) provides:

4. Appeal board review. The appeal board may on its own motion affirm, modify, or set aside any decision of a administrative law judge on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The appeal board shall permit such further appeal by any of the parties interested in a decision of an administrative law judge and by the representative whose decision has been overruled or modified by the administrative law judge. The appeal board shall review the case pursuant to rules adopted by the appeal board. The appeal board shall promptly notify the interested parties of its findings and decision.

It is apparent the claimant was confused by the December 10, 2010 decision, which seemed in her favor at that time. When she made further inquiry, she reasonably relied on advice from Iowa Workforce Development Center personnel who mistakenly advised her not to appeal because it was in her favor. It wasn't until her benefits discontinued that she filed her appeal way beyond the statutory deadline. We find the claimant's filing of the late appeal was due to agency error. As such, we conclude that good cause has been established and shall consider her appeal as timely for which the merits of this case must be decided. For this reason, this matter will be remanded for another hearing before an administrative law judge.

**DECISION:**

The administrative law judge's decision dated February 21, 2012 is **REVERSED, as to timeliness, and REMANDED** to an administrative law judge in the Unemployment Insurance Appeals Bureau for a new hearing on the merits of this case following due notice. After the hearing, the administrative law judge shall issue a decision which provides the parties appeal rights.

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John A. Peno

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Monique F. Kuester