

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHEILA J CRAFT
Claimant

APPEAL NO: 12A-EUCU-00180-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES

OC: 05/30/10
Claimant: Appellant (4)

Iowa Code § 96.4(3) –Ability to and Availability for Work
Iowa Code § 96.6(2) – Timeliness of Appeal and Finality of a Decision

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a February 8, 2011 determination (reference 03) that held she was not eligible to receive benefits October 12, 2010 through January 22, 2011, because she was unable to work. The claimant participated in the hearing. Alyce Smolsky, a TALX representative, appeared on the employer's behalf with David Mollenhoff, the employer human's resource representative. The parties gave the administrative law judge permission to review the administrative record in this matter. Based on the administrative record, the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant eligible to receive benefits as of December 5, 2010, but is ineligible to receive benefits for the weeks ending October 16 through December 4, 2010.

ISSUES:

Is the claimant able to and available for work October 12 through January 22, 2011?

Did the claimant file a timely appeal or establish a legal excuse for filing a late appeal?

What affect does the decision for 11A-UI-01796-LT have on reference 03?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of May 30, 2010. Two representatives' determinations were issued on February 8, 2011 (references 01 and 03.) Reference 01 held the claimant qualified to receive benefits based on the reasons for her employment separation. Reference 03 held the claimant ineligible to receive benefits from October 12, 2010, through January 22, 2011. The employer appealed reference 01, but the claimant did not appeal reference 03. When a hearing was scheduled, the separation issues and the issue of whether the claimant was able to and available for work were included as issues on the hearing notice. Based on the evidence presented during a March 16, 2011 hearing, an administrative law judge determined the claimant's December 3, 2010 employment separation was for non-disqualifying reasons. The administrative law judge also held the claimant was able to and available for work and eligible to receive benefits. See decision for appeal 11A-UI-01796-LT. Neither party appealed the administrative law judge's decision.

Based on information in the administrative record, Dr. Duane Widen, the claimant's treating physician, informed the Claims Section in a February 1, 2011 letter that the first date the claimant was treated for some pain issues was October 12, 2010. The claimant's last treatment was on January 21, 2011.

Even though the claimant did not appeal reference 03, her eligibility to receive benefits was an issue addressed at the hearing and in the administrative law judge's decision. The claimant then assumed this matter had been resolved. Also, reference 04 issued on February 9, 2011, held the claimant eligible to receive benefits as of January 23, 2011.

The claimant did not appeal until she received a representative's June 14, 2012 overpayment determination. The claimant assumed the administrative law judge's decision had resolved the issue of her eligibility to receive benefits. The claimant filed an appeal on June 18, 2012.

REASONING AND CONCLUSIONS OF LAW:

The law states that an unemployment insurance determination is final unless a party appeals a determination within ten days after the determination was mailed to the party's last known address. Iowa Code § 96.6(2). The Iowa Supreme Court has ruled that appeals must be filed within the time limit set by statute and the administrative law judge has no authority to review a determination 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 appeal was filed more than a year after the deadline for appealing expired. But the decision for appeal 11A-UI-01796-LT held the claimant eligible to receive benefits as of December 3, 2010. Neither party appealed this decision. As a result, 11A-UI-01796 is the final decision in this matter as of December 3, 2010. Iowa Code 96.6(4). An administrative law judge's decision can reverse, affirm or modify a representative's determination. The legal effect of the decision for 11A-UI-01796-LT is that it modified the February 8, 2011 determination (reference 03) and held the claimant able to and available for work as of December 3, 2010.

The next question is whether the claimant had a reasonable opportunity to file a timely appeal from the February 8, 2011 determination (reference 03). *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant had a reasonable opportunity to file an appeal, but did not do so. Before the hearing notice was mailed to the parties (after the employer appealed reference 01), the claimant had not filed an appeal from reference 03.

The claimant's 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 claimant did not establish a legal excuse for filing a late appeal, the Appeals Section does not have any legal authority to make a decision on the merits of her appeal with respect to her eligibility to receive benefits between October 12 and December 3, 2010. This means the claimant remains ineligible to receive benefits for the weeks ending October 16 through December 4, 2010.

DECISION:

The representative's February 8, 2011 determination (reference 03) is modified in the claimant's favor. As a result of the decision for appeal 11A-UI-01796-LT, the claimant was determined able to and available for work and eligible to receive benefits as of December 5, 2010. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal from reference 03. Therefore, the Appeals Section does not have any legal jurisdiction to address her eligibility to receive benefits for the weeks ending October 16 through December 4, 2010. The claimant is not eligible to receive benefits for these weeks.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/