IOWA WORKFORCE DEVELOPMENT UNEMPLOYMENT INSURANCE APPEALS

69 01F7 (0 06) 2001079 EL

Claimant: Appellant (1)

	00-0137 (9-00) - 3031078 - El
CLAUDIA A GLOECKLER Claimant	APPEAL NO. 11A-UI-09428-DWT
Claimant	ADMINISTRATIVE LAW JUDGE DECISION
FBG SERVICE CORPORATION Employer	
	OC: 11/07/10

Iowa Code § 96.4(3) – Availability for Work Iowa Code § 96.6(2) – Timeliness of Appeal

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's June 7, 2011 determination (reference 02) that held her ineligible to receive benefits as of May 1, 2011, because she restricted the hours she was willing to work. The claimant participated in the hearing. Tom Kuiper, a TALX representative, appeared on the employer's behalf. Dennis Westendorf, a program manager, testified on the employer's behalf. Steven Rhoades interpreted the hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is not eligible to receive benefits as of May 1, 2011, because she did not file a timely appeal.

ISSUE:

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

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of November 7, 2010. She has worked for the employer for a few years. She works full-time on the evening shift. The claimant reopened her claim for benefits during the week of May 1, 2011. The claimant reopened her claim when her supervisor sent her home and did not have her work on May 6. The claimant worked 38.5 hours the week ending May 14. She worked eight hours on May 16 and then did not work again until June 1. The claimant worked full-time hours in June.

On June 7, 2011, a representative's determination was mailed to the claimant and employer. The determination held the claimant ineligible to receive benefits as of May 1, 2011, because she was not willing to work the number of hours her job required. The determination informed the parties that this was final unless a party filed an appeal or an appeal was postmarked on or before June 17, 2011.

The claimant does not know when she received the June 7 determination. On July 19, the claimant went to her local Workforce office after the employer called her on July 18 and told her not to come to work. The claimant and another employee had gotten into a disagreement on Friday, July 15. On July 18, the employer asked the claimant to stay home so the employer could find out what happened. After the employer told her to stay home on July 18, the claimant went to her local Workforce office. The record does not indicate she reopened her claim, but instead filed an appeal at her local workforce office.

The only weekly claims the claimant has filed are for the weeks ending May 7, 14, and 21. As of the date of the hearing, the employer is again scheduling the claimant to work 40 hours a week.

REASONING AND CONCLUSIONS OF LAW:

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's determination is mailed to the parties' last-known address, files an appeal from the determination; it is final. Benefits shall then be paid or denied in accordance with the representative's determination. Iowa Code § 96.6(2). 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 Iowa Supreme Court has ruled that appeals from unemployment insurance determinations 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 claimant's appeal was filed after the June 17 deadline for appealing expired.

The next question is whether the claimant had a reasonable opportunity to file 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 claimant did not know when she received the June 7 determination. The evidence, however, shows that if the employer had not asked the claimant to stay home on July 18 because of the confrontation between the claimant and another employee on July 15, the claimant would not have filed an appeal. By the time the claimant received the June 7, she was again working full-time hours and was not filing any weekly claims. Since ability to and availability issues must be examined each week a claimant files a claim for benefits, Iowa Code § 96.4(3), the claimant could have reopened her claim in June, July, or August and established the she was then able to and available for work. This was not done.

The claimant filed a late appeal and did not establish a legal excuse for filing a late appeal. The Appeals Section does not have legal jurisdiction to address the merits of her appeal. This means, the claimant remains ineligible to receive benefits for the weeks ending May 7 through 21; but, if her hours are again reduced, she can reopen her claim and establish her ability to and availability for work.

DECISION:

The representative's June 7, 2011 determination (reference 02) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. The Appeals Section does not have jurisdiction to address the merits of her appeal. This means the claimant remains ineligible to receive benefits for the weeks ending May 7 through 21, 2011. If the claimant's hours are again reduced, she must reopen her claim and establish her ability to and availability for work.

Debra L. Wise Administrative Law Judge

Decision Dated and Mailed

dlw/kjw