

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JODI N ELBERT
Claimant

APPEAL NO: 11A-EUCU-00085-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 08/24/08
Claimant: Appellant (1)

Public Law 110-252 – Emergency Unemployment Compensation
Iowa Code § 96.19(20) – Definition of Exhaustee
Iowa Code § 96.6(2) – Timeliness of Appeal

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's January 6, 2011 determination (reference 07) that held she was not eligible to receive Emergency Unemployment Compensation benefits as of August 22, 2010, because she was instead eligible to receive regular unemployment insurance benefits as of that date. The claimant participated in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge concludes that as of August 22, 2010, the claimant is eligible to receive regular unemployment insurance benefits, not Emergency Unemployment Compensation benefits.

ISSUES:

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

Is the claimant eligible to receive Emergency Unemployment Compensation benefits or regular unemployment insurance benefits as of August 22, 2010?

FINDINGS OF FACT:

The claimant established claim for benefits during the week of August 24, 2008. She started receiving Emergency Unemployment Compensation benefits the week ending May 16, 2009.

The claimant's first benefit year ended August 22, 2009. A new benefit year was established for her during the week of August 23, 2009, and she started receiving regular unemployment insurance benefits again. When the claimant exhausted these benefits, the Department started paying her Emergency Unemployment Compensation benefits again as of June 27, 2010. The claimant did not know, understand or advised that she needed to establish a new claim or have a Department representative review her claim in August 2010, to see if she was required to establish a new benefit year.

A benefit year that is established as of August 22, 2010, looks at wage credits earned from April 1, 2009 through March 31, 2010. The claimant worked for Jeff Elpert Construction and earned the following wages: \$3,600.00 from April 1 through June 30, 2009; \$3,600.00 from July 1 through September 30, 2009, \$4,800.00 from October 1 through December 31, 2009; and \$2,400.00 from January 1 through March 31, 2010. Based on these wages, the claimant is monetarily eligible to receive regular benefits as of August 22, 2010. The claimant's maximum weekly benefits amount equals \$240.00 a week.

In early January 2011, the claimant brought her school schedule to her local Workforce office. On January 6, 2011 a representative's determination was mailed to the claimant. This determination informed the claimant that as of August 22, 2010, she was not eligible to receive Emergency Unemployment Compensation benefits because she was instead eligible to receive regular unemployment insurance benefits. The claimant does not recall receiving the January 6, 2010 determination. After she received a January 12, 2011 overpayment determination, she contacted her local Workforce office to find out why she was being held overpaid. The claimant filed her appeal at her local Workforce office on January 20, 2011.

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 January 18, 2011 deadline for appealing expired. Since January 16 was a Saturday and January 17 was a federal holiday, Martin Luther King Day, the deadline to appeal was automatically extended to Tuesday, January 18, 2011.

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 evidence establishes the claimant did not have a reasonable opportunity to file a timely appeal.

The claimant's failure to file a timely appeal was due to a delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) excuses the delay in filing an appeal. Since the claimant established a legal excuse for filing a late appeal, the Appeals Section has jurisdiction to address the merits of her appeal.

The Emergency Unemployment Compensation (EUC) program was created by Public Law 110-252, Title VI. This new temporary unemployment insurance program provides additional weeks of unemployment benefits to certain workers who have exhausted their rights to regular unemployment compensation benefits. To receive extended unemployment insurance benefits (EUC), a person must be an "exhaustee" within the meaning of unemployment insurance law. Pursuant to Iowa Code § 96.19(20), a person is not an "exhaustee" if she is monetarily eligible for regular unemployment insurance benefits in Iowa or another state.

Based on the wages the claimant received from April 1, 2009, through March 31, 2010, she is monetarily eligible to receive \$240.00 a week as of August 22, 2010. As of August 22, 2010, the claimant is not an "exhaustee" for purposes of receiving federal extended unemployment compensation benefits (EUC) under her August 24, 2008 claim.

DECISION:

The representative's January 6, 2011 determination (reference 07) is affirmed. The claimant did not file a timely appeal, but established a legal excuse for filing late appeal. The Appeals Section has jurisdiction to address the merits of her appeal. The claimant is not eligible to receive Emergency Unemployment Compensation benefits as of August 22, 2010, because she is instead monetarily eligible to receive regular unemployment insurance benefits as of this date.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css