

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

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**DOMINI C DEITER**

Claimant,

and

**EXPRESS SERVICES INC**

Employer.

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**HEARING NUMBER: 14B-UI-14098**

**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: 96.5-1, 96.3-7**

**DECISION**

**UNEMPLOYMENT BENEFITS ARE DENIED**

**STATEMENT OF THE CASE:**

This matter comes before the Board as a result of the Polk County District Court Order, which remanded the case "...for appropriate consideration of the facts in the record and applicable law defining "good cause" as discussed in *Houlihan v. Employment Appeal Board*, 545 N.W.2d at 865-666..."

In compliance with the Court's Order, the Board has reconsidered the timeliness issue of the Claimant's appeal. The Claimant filed an initial appeal on January 19, 2013 for a January 14, 2013 decision. The Board did not receive that first appeal, but instead received her second appeal attempt on May 3, 2013, which the Board initially found untimely. Based on her second appeal, it is clear that the Claimant intended to follow through with defending the merits of her case as set forth in the good cause standard laid out by *Houlihan* in which the Court stated "...good cause showing...is akin to the 'good cause' that must be shown in setting aside a default judgment in Iowa Rule of Civil Procedure 236," and in *Dealers Warehouse Co., v. Wahl & Associate*, 216 N.W.2d 391, 394 (Iowa 1974) as cited in *Houlihan*, supra.

"...Good cause is a sound, effective truthful reason, something more than an excuse, plea, apology, extenuation, or some justification for the resulting effect. The movant must show his failure to defend was not due to his negligence or want of ordinary care or attention, or to his carelessness or inattention. He must show affirmatively he did intend to defend and took steps to do so, because of some misunderstanding, accident, mistake or excusable neglect failed to do so..."

Based on the Claimant's appeal, we find good cause has been established for what appeared to be a late appeal, and the Board shall consider it timely.

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. The administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED**.

The Employment Appeal Board would note that the Claimant requested an extension request to submit written argument on May 23, 2014, along with a document entitled, "**Additional evidence to be included with my appeal letter...**" when she provided the agency with her new address. However, the Transmittal of Testimony, which was accompanied with the CD recording, had not yet been mailed to the parties. Those items were mailed on May 28<sup>th</sup> and established a deadline of June 4, 2014 for the submission of written arguments from both parties. No other written argument was submitted by the Claimant other than the document she submitted on May 23<sup>rd</sup>.

The Board would comment that the Claimant was provided the opportunity to submit her written argument for consideration. The Employment Appeal Board reviewed the argument that was included in her May 23<sup>rd</sup> document. A portion of the argument consisted of additional evidence which was not contained in the administrative file and which was not submitted to the administrative law judge. While the argument and additional evidence were considered, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision.

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Kim D. Schmett

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Cloyd (Robby) Robinson

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Ashley R. Koopmans

AMG/fnv