

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PHILLIP W TANNER
Claimant

APPEAL NO. 09A-UI-11783-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TASKE FORCE INC
Employer

**Original Claim: 02/01/09
Claimant: Appellant (1)**

Section 96.19-18(b) (1) – Reportable Wages to Iowa
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Phillip W. Tanner (claimant) appealed a representative's July 22, 2009 decision (reference 01) that denied his request to have wages added to his Iowa unemployment insurance claim. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 1, 2009. The claimant participated in the hearing. The employer did not respond to the hearing notice or participate in the hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

Can the wages the claimant earned from the employer when he worked in Missouri be used by Iowa to establish a claim for benefits in Iowa?

FINDINGS OF FACT:

The employer's office is in Iowa, but the employer assigned the claimant to a job in Missouri. The claimant worked in Missouri between July 1 and September 30, 2008. The employer reported the wages the claimant earned in Missouri to Iowa. The claimant also worked in Tennessee during the second quarter of 2008 (April 1 through June 30, 2008.) These wages were properly reported to Tennessee.

When the claimant was laid off from his job assignment in Missouri, he established a claim for unemployment insurance benefits in Iowa during the week of February 1, 2009. Based on the wages reported to Iowa in his base period, the Department concluded the claimant was eligible to receive benefits based on Iowa's laws.

After the claimant received benefits from Iowa, the State of Missouri determined the wages the claimant earned in Missouri should have been reported to Missouri. Based on Missouri's ruling, Iowa removed the wages reported by the employer to Iowa during the third quarter of 2008.

These wages were then transferred or reported in Missouri. As a result of removing the wages the claimant had earned in Missouri from Iowa to Missouri, the claimant did not have any wages in Iowa during his base period. As of the date of the hearing, the claimant has established a claim for benefits in Missouri. The claimant believes he requested that this claim be backdated to be effective as of February 1, 2009.

On July 22, 2009, a representative's decision was mailed to the claimant and employer. This decision denied the claimant's request to have wages he earned from the employer in Missouri added to his Iowa unemployment insurance claim. The decision informed the parties an appeal had to be filed on or before August 1, 2009.

The claimant received the representative's July 22 decision sometime prior to August 11, 2009. The claimant filed his appeal on August 17.

REASONING AND CONCLUSIONS OF LAW:

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's decision is mailed to the parties' last-known address, files an appeal from the decision, the decision is final. Benefits shall then be paid or denied in accordance with the representative's decision. 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 decisions must be filed within the time limit set by statute and the administrative law judge has no authority to review a decision 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 August 3, 2009 deadline for appealing expired. (Since August 1 was a Saturday, the claimant had until Monday, August 3, to file a timely appeal.)

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 does not indicate if the claimant had a reasonable opportunity to file a timely appeal. The claimant did not know when he received the July 22 decision. While he recalled receiving it before he received the August 11 overpayment decision, it is not known if he received it before or after August 3, 2009.

The claimant did not establish that his failure to file a timely appeal appears to be 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. The claimant did not establish a legal excuse for filing a late appeal. Therefore, the Appeals Section does not have legal jurisdiction to make a decision on the merits of the appeal.

In the alternative, if the claimant established a legal excuse for filing a late appeal, to be eligible to receive benefits, he must have enough wages in his base period to be monetarily eligible. When the employer reported the claimant's third quarter earnings to Iowa, he had enough wages in his base period (from Iowa and Tennessee) to be monetarily eligible to receive benefits based on Iowa's unemployment insurance laws. After Missouri ruled the employer was required to report all the wages the claimant earned while working in Missouri to the state of Missouri, Iowa had to transfer these wage credits to Missouri.

The United States Department of Labor ruled that effective January 11, 2009, a claimant must have wages in the "paying" State to have a combined-wage claim. Since the claimant's only wages are from working in Tennessee and Missouri, these wages cannot be used on an Iowa combined-wage claim. This means the claimant is not monetarily eligible to receive benefits from Iowa, because he did not have any wages credits in Iowa. The claimant, however, is monetarily eligible to receive benefits from Missouri or Tennessee. It can be presumed the State of Missouri determined that because the claimant's service was localized or performed in Missouri, the employer was legally obligated to report these wages to Missouri. This would be similar to Iowa's definition of employment under Iowa Code § 96.19-18(b)(1).

Basically, since the claimant worked in Missouri and Tennessee and did not earn any wages in Iowa, Missouri or Tennessee is the liable state and the claimant must claim unemployment benefits from Missouri or Tennessee and not Iowa. Therefore, the claimant is not eligible to receive benefits from Iowa as of February 1, 2009, but he is eligible to receive benefits from Missouri. If the claimant has not requested that his Missouri claim be backdated to February 1, 2009, he should do so immediately.

DECISION:

The representative's July 22, 2009 decision (reference 01) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. Therefore, the Appeals Section has no legal jurisdiction to address the merits of his appeal. In the alternative, if the claimant established a legal excuse for filing a late appeal, after the State of Missouri determined the employer should have reported all the wages the claimant earned in Missouri to the State of Missouri instead of Iowa, the wages that were mistakenly reported to Iowa had to be transferred to Missouri. As a result, the claimant is not monetarily eligible to receive benefits from Iowa, because he does not have any base period wage credits in Iowa. Instead, as of February 1, 2009, he was monetarily eligible to receive benefits from Missouri or Tennessee. As of the date of the hearing, the claimant established a claim for benefits from Missouri. The claimant should make sure his Missouri claim is backdated to February 1, 2009. The claimant's local Workforce office should help the claimant make sure his Missouri claim is effective as of February 1, 2009.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw