

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RENEE A SINCLAIR
Claimant

APPEAL NO. 10A-UI-08600-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KUM & GO LC
Employer

OC: 10/11/09
Claimant: Appellant (2/R)

Section 96.4-3 – Availability for Work
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed a representative's June 8, 2010 (reference 02) overpayment decision that held her overpaid \$588 in benefits she received for the weeks ending October 17 through November 7, 2010. The Appeals Section only set up a hearing on the underlying reason for the overpayment, a representative's December 3, 2009 decision (reference 01), that held her ineligible to receive benefits as of October 11, 2009, because she was still working her part-time job and did not consider her unemployed or partially unemployed. A telephone hearing was held on August 3, 2010. The claimant participated in the hearing. Kathleen Tonn, the store manager, appeared on the employer's behalf. 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.

ISSUES:

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

As of October 11, 2009, is the claimant eligible to receive partial benefits when she was laid off from her full-time employment?

FINDINGS OF FACT:

The claimant worked full-time for Universal Manufacturing and part-time for the employer. The claimant started working part-time for the employer in March 2009. She works 25 to 32 hours a week for the employer.

The claimant established a claim for benefits during the week of October 11, 2009, after she was temporarily laid off from her full-time job at Universal Manufacturing. The claimant filed claims for partial benefits for the weeks ending October 17 through November 7, 2009. When the claimant was called back to work at Universal Manufacturing, she did not file any more weekly claims.

A representative issued a decision on December 3, 2009. The decision was mailed to both parties, but neither party recalls receiving the decision. The claimant did not know about the December 3, 2009 decision until mid-June, when she received the June 8, 2010 overpayment decision. She went to her local Workforce office to find out why she received the overpayment decision. She then learned the overpayment decision was issued as a result of the December 3, 2009 decision. The claimant filed an appeal on June 17, 2010.

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 December 14, 2009 deadline for appealing expired. Since December 13, 2009, was a Sunday, the deadline was automatically extended to Monday, December 14, 2009.

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 because she did not receive the decision. The employer did not even remember receiving the December 3, 2009 decision.

The claimant's failure to file a timely appeal was due to an Agency error or misinformation or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) excuses the delay in filing an appeal. As soon as the claimant learned about the December 3 decision, which was not until mid-June 2010, she filed an appeal. Since the claimant established a legal excuse for filing a late appeal, the Appeals Section has jurisdiction to make a decision on the merits of the appeal.

The claimant established a claim for benefits because she was temporarily laid off from her full-time job. An individual is deemed partially unemployed in any week, while employed at her then regular job, but works less than regular full-time week and earns less than her weekly benefits amount plus \$15.00. Iowa Code § 96.19-38-b. Since the claimant was only temporarily laid off from her regular full-time job as of October 11, 2009, she was partially unemployed, even though she continued to work part-time for the employer.

It appears the representative relied on 871 IAC 24.23(26). This regulation states that when a claimant is still employed at a part-time job and is not working reduced hours, the claimant is not considered partially unemployed. This applies when a claimant is **ONLY** working a part-time job and files a claim for benefits. A claimant cannot be considered partially unemployed because she continues to work all the hours she has worked in her base period or was hired to work. The applicable regulation that applies to this case is 871 IAC 23.43(4). This regulation states that a claimant who has been separated from a regular employer and who continues working for a part-time base period employer is eligible to receive benefits for benefits as long as she

receives the same employment from the part-time employer that she had during the base period.

Based on the applicable laws in this case, as of October 11, 2009, the claimant is eligible to receive partial unemployment insurance benefits. This means the claimant is legally entitled to receive benefits for the weeks ending October 17 through November 7, 2009, and she has not been overpaid any benefits for these weeks.

DECISION:

The representative's December 3, 2009 decision (reference 01) is reversed. Although the claimant filed a late appeal, she established a legal excuse for filing a late appeal. Therefore, the Appeals Section has jurisdiction to address the merits of her appeal. When the claimant was temporarily laid off from her full-time job, but still constituted working part-time for the employer, she was partially unemployed and is eligible to receive partial unemployment insurance as of October 11, 2009. This means she was legally entitled to receive benefits for the weeks ending October 17 through November 7, 2009. This matter is **Remanded** to the Claims Section to issue an amended decision that complies with this decision by holding the claimant has not been overpaid \$588.00 in benefits she received for the weeks ending October 17 through November 7, 2009.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw