

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRAVIS J WIERSMA
Claimant

APPEAL NO: 11A-UI-14729-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 01/10/10
Claimant: Appellant (1)**

871 IAC 24.9(1) – Monetary Determination and Timeliness of Appeal

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a March 15, 2010 corrected monetary determination that reduced his maximum weekly benefit from \$258 to \$216. Mary Wiersma, the claimant's mother, appeared on the claimant's behalf at the hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge finds the March 15, 2010 corrected monetary determination is correct and the claimant was eligible to receive a maximum weekly benefit of \$216, not \$258.

ISSUES:

Did the claimant file a timely appeal from a March 15, 2010 corrected monetary determination or establish a legal excuse for filing a late appeal?

On his January 10, 2010 claim, is the claimant's maximum weekly benefit amount \$258 or \$216?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of January 10, 2010. Initially, the Department determined the claimant was monetarily eligible to receive a maximum of \$258 a week in benefits. This was based on wages reported under the claimant's social security number from October 1, 2008, through September 30, 2009. Initially, wages from Unity Biofuels LLC were reported during the third quarter of 2009 under the claimant's social security number.

When Unity Biofuels responded to the notice of claim and reported that this employer did not know the claimant and the claimant had never worked for this employer, the Department reviewed this employer's quarterly tax contribution forms. After reviewing Unity Biofuels quarterly tax contributions for this time period, the Department concluded this employer had erroneously reported wages under the claimant's social security number for another person. The Department removed the wages from the claimant's social security number that had been misreported by Unity Biofuels.

On March 15, 2010, the Department removed \$963.73 from the third quarter of 2009. This in turn reduced the claimant's maximum weekly benefit amount from \$258 a week to \$216 a week. On March 15, 2010 a corrected monetary determination was issued and indicated the claimant's weekly benefit amount had been reduced. The claimant did not receive the March 15, 2010 corrected monetary determination. After the claimant received an overpayment determination issued on November 3, 2011, he contacted his local Workforce office in an attempt to find out why he had been held overpaid. The claimant faxed his appeal on November 11, 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. 871 IAC 24.9(1). An unemployment benefits contested case is commenced with the filing, by mail, facsimile or in person, a written appeal. Iowa Code § 17A.12(9), 871 IAC 26.4(1).

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 March 25, 2010 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 evidence establishes the claimant did not have a reasonable opportunity to file a timely appeal, because he did not receive the March 15, 2010 corrected monetary determination.

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. 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 wages the claimant earned during his base period were as follows:

	2008/4	2009/1	2009/2	2009/3
CITY OF SIOUX 141	148			
MGMV INC	924	992	734	402
PUNT CHEVROLET-PONTIAC-			735	1106
HOOGENDOORN CONSTRUCTION				3476

Wages of \$963,73 that initially showed up in the third quarter from Unity Biofuels was a mistake. After Unity Biofuels provided information that the claimant had not worked for this employer, wages from this employer were deleted from the claimant's social security number. The claimant was then eligible to receive a maximum weekly benefit amount of \$216 instead of \$258.

DECISION:

The March 15, 2010 corrected monetary determination is affirmed. The claimant did not file a timely appeal, but established a legal excuse for filing a late appeal. The Appeals Section has jurisdiction to address the merits of his appeal. After discovering wages had been incorrectly reported wages to the claimant's social security, these were properly removed from the claimant's social security number. Based on the wages the claimant earned during his base period, the claimant was eligible to receive a maximum weekly benefits amount of \$216, not \$258.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs