

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMIE L DRILLING**  
Claimant

**APPEAL NO: 11A-EUCU-00788-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 04/05/09  
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 October 7, 2011 determination (reference 04) that held she was not eligible to receive Emergency Unemployment Compensation benefits as of April 3, 2011, because she was instead monetarily eligible to receive regular unemployment insurance benefits. A telephone hearing was held on November 18, 2011. The claimant participated in the hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge concludes that as of April 3, 2011, the claimant is monetarily eligible to regular unemployment insurance benefits.

**ISSUES:**

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

As of April 3, 2011, is the claimant eligible to receive Emergency Unemployment Compensation benefits or regular unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant established a claim for benefits during the week of April 5, 2009. She started receiving Emergency Unemployment Compensation benefits the week ending February 27, 2010. She was monetarily eligible to establish a new benefit year the week of April 4, 2010. She received regular unemployment insurance benefits for the weeks ending April 10 through November 6, 2010. When the claimant exhausted her regular unemployment insurance benefits, the Department automatically switched her back to Emergency Unemployment Compensation benefits under her April 5, 2009 claim. She started receiving Emergency Compensation benefits again during the week ending November 13, 2010.

The claimant's benefit year for her second benefit year established the week of April 4, 2010, ended on April 2, 2011. The claimant went to her local Workforce office the first week of May 2011. At that time she asked if there anything she needed to do and asked if she should apply

for training extension benefits. The representative told her there was nothing she needed to do and she was still eligible to receive benefits.

The claimant's base period for a claim established the week of April 3, 2011 is January 1 through December 31, 2010. She earned the following wages in 2010.

	<u>2010/1</u>	<u>2010/2</u>	<u>2010/3</u>	<u>2010/4</u>	<u>2011/1</u>
CENTRAL IOWA HOSPITAL CORP	2912	2914	3517	1164	1360
NATIONWIDE MUTUAL INSURANCE	426				

The claimant did not know or understand she was required to establish a new claim or have a Department representative review her claim in early April 2011 to see if she needed to establish a new benefit year. Based on the wages the claimant earned in 2010, she is monetarily eligible to regular unemployment insurance benefits as of April 3, 2011. Her maximum weekly benefit is \$152.00.

It was not until mid-September 2011 that Department personnel recognized the claimant was monetarily eligible to establish a new benefit year and could receive regular unemployment insurance benefits the week of April 3, 2011. In September 2011 a Department representative backdated her new benefit year to April 3, 2011.

The Department issued a determination on October 7, 2011, informing the claimant she was not eligible to receive Emergency Unemployment Compensation benefits as of April 3, 2011, because she was instead eligible to receive regular unemployment insurance benefits. The claimant did not receive the October 7 determination until Saturday, October 22, 2011. She received this determination and two other determinations on October 22, 2011. The claimant went to her local Workforce office on Monday, October 24, 2011. She filed her appeal at her local Workforce office on October 24, 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 October 17 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 it was timely mailed and she did not receive the determination until October 22.

The claimant's failure to file a timely appeal was due to the Department's delay in mailing the determination to her. Instead of mailing the October 7 determination that day, all three determinations were mailed together. The latest of three determinations the claimant received had been issued on October 20, 2011. Based on the Department's actions, the claimant established a legal excuse for filing a late appeal. 871 IAC 24.35(2). 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 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 January 1, 2010, through December 31, 2010, she is monetarily eligible to receive \$152.00 a week in benefits as of April 3, 2011. This means that as of April 3, 2011, she claimant is not an "exhaustee" for purposes of receiving federal extended unemployment compensation benefits (EUC). As of April 3, 2011, the claimant is not eligible to receive Emergency Unemployment Compensation benefits based on her April 5, 2009 claim. The claimant is monetarily eligible to receive regular unemployment insurance benefits as of April 3, 2011.

**DECISION:**

The representative's October 7, 2011 determination (reference 04) 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 her appeal. As of April 3, 2011, the claimant is monetarily eligible to receive regular unemployment insurance, not Emergency Unemployment Compensation benefits.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs