IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JOHN R CARLUCCI
Claimant

WATERLOO-CEDAR VALLEY CATHOLIC SCHOOLS
Employer

APPEAL NO. 06A-UI-10668-NT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/02/06 R: 03
Claimant: Respondent (2/R)

Section 96.3-5 – Lay Off Due to Business Closing

STATEMENT OF THE CASE:

The employer filed an appeal from the representative's decision dated October 23, 2006, reference 01, which recalculated the claimant's benefits upon a finding that the claimant was laid off because the employer was going out of business. After due notice was issued, a hearing was scheduled and held via telephone on November 20, 2006. The claimant participated personally. Appearing on behalf of the employer was Mr. Paul Jahnke, Employer Representative. Appearing as a witness for the employer was Ms. Karen McCabe. Exhibit Number One was received into evidence.

ISSUE:

At issue in this matter is whether Mr. Carlucci was separated due to a business closing and whether his benefits should be recalculated.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record the administrative law judge finds: Mr. Carlucci was employed by the captioned employer from May 2003 until June 30, 2006, when he was laid off due to a lack of work. Mr. Carlucci held the position of chief administrator.

At or near the time of Mr. Carlucci's separation, Queen of Peace School located at 127 East Parker Street, Waterloo, Iowa, was closed by the Waterloo-Cedar Valley Catholic Schools. Although Mr. Carlucci did not work at Queen of Peace School nor at that physical location he, nevertheless, was mistakenly identified as being separated due to the school closing. The claimant's separation took place due to lack of work when his position was eliminated due to financial reasons.

The employer's appeal was filed by Mr. Jahnke by a facsimile on October 30, 2006 and Mr. Jahnke received a status report indicating that the fax had been sent and received by the Claims Center. Other appeals faxed by Mr. Jahnke that day were received as timely. For

reasons that are unknown the appeal in this matter showed that it had not been received until November 3, 2006, one day beyond the ten-day appeal period.

REASONING AND CONCLUSIONS OF LAW:

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. Gaskins v. Unempl. Comp. Bd. of Rev., 429 A.2d 138 (Pa. Comm. 1981); Johnson v. Board of Adjustment, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

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 record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. Franklin v. IDJS, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. Beardslee v. IDJS, 276 N.W.2d 373, 377 (Iowa 1979); see also In re Appeal of Elliott 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert 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).

(1) The record shows that the appellant did have a reasonable opportunity to file a timely appeal.

(2) The record shows that the appellant did not have a reasonable opportunity to file a timely appeal.

The administrative law judge finds based upon the testimony, witnesses and the hearing record, that the employer has established good cause in this matter for what had been determined as a late appeal. The evidence establishes that Mr. Jahnke personally facsimiled the appeal to the Claims Center on October 30, 2006 and received a positive confirmation that the document had been received. Other appeals faxed by Mr. Jahnke that day were received as timely. For reasons that are unknown the appeal in this matter was determined to not have been received until one day after the statutory ten-day appeal period. The administrative law judge finds that the employer did file a timely appeal and for reasons unknown the appeal document was not indicated as being received until a later date. The employer's appeal is timely.

Iowa Code section 96.3-5 provides:

> 5. Duration of benefits. The maximum total amount of benefits payable to an eligible individual during a benefit year shall not exceed the total of the wage credits accrued to the individual's account during the individual's base period, or twenty-six times the individual's weekly benefit amount, whichever is the lesser. The director shall maintain a separate account for each individual who earns wages in insured work. The director shall compute wage credits for each individual by crediting the individual's account with one-third of the wages for insured work paid to the individual during the individual's base period. However, the director shall recompute wage credits for an individual who is laid

> off due to the individual's employer going out of business at the factory, establishment, or other premises at which the individual was last employed, by crediting the individual's account with one-half, instead of one-third, of the wages for insured work paid to the individual during the individual's base period. Benefits paid to an eligible individual shall be charged against the base period wage credits in the individual's account which have not been previously charged, in the inverse chronological order as the wages on which the wage credits are based were paid. However if the state "off indicator" is in effect and if the individual is laid off due to the individual's employer going out of business at the factory, establishment, or other premises at which the individual was last employed, the maximum benefits payable shall be extended to thirty-nine times the individual's weekly benefit amount, but not to exceed the total of the wage credits accrued to the individual's account.

The administrative law judge having reviewed the testimony and the hearing record finds that although the claimant was laid off due to the lack of work, Mr. Carlucci was not separated because his employer was "going out of business" at the premises at which Mr. Carlucci was last employed. Therefore, the claimant's maximum benefits payable shall not be extended to 39 times the individual's weekly benefit amount.

This matter is remanded to Unemployment Insurance Services to recalculate the maximum benefit amount payable to Mr. Carlucci based upon his nondisqualifying separation from employment due to lack of work, without business closing as a factor.

DECISION:

The fact finder's decision dated October 23, 2006, reference 01, is reversed. The claimant is eligible to receive unemployment insurance benefits as long as he meets all other eligibility requirements. The claimant was not separated because the employer was going out of business. The matter is remanded to Unemployment Insurance Services to recalculate the claimant's maximum benefit amount without the business closing as a factor.

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Terence P. Nice
Administrative Law Judge

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Decision Dated and Mailed

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