IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

DANIEL L CLIFLTON
Claimant

APPEAL NO. 08A-UI-10933-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMP ASSOCIATES
Employer

OC: 03/09/08   R: 04
Claimant: Respondent (1)

Section 96.5-3-a – Refusal of Suitable Work
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

An appeal was set up as though Temp Associates (employer) appealed a representative's May 14, 2008 decision (reference 02). This decision concluded Daniel L. Clifton (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant refused an offer of work with good cause. The employer never planned to appeal the May 14 decision. Instead, the employer appealed a July 7 decision (reference 03) after learning the Department had not deleted the wages the claimant earned from the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 8, 2008. The claimant participated in the hearing. Mike Thomas, the account 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.

ISSUE:

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

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of March 9, 2008. On March 28, 2008, a representative's decision was mailed to the claimant and employer. This decision held the claimant was qualified to receive benefits, and the employer's account was subject to charge because the claimant became unemployed for nondisqualifying reasons. The employer received this decision. The employer did not dispute this decision and had no intention of appealing this decision.

On May 14, 2008, the Department mailed a decision to the employer and claimant. This decision held the claimant qualified to receive benefits even though he declined an April 23, 2008 offer of work from the employer. The employer received this decision, but did not dispute the decision. The employer had no intention of appeal the May 14 decision.

The employer received a decision that was mailed on July 7, 2008. This decision again held the claimant eligible to receive benefits even though he had voluntarily quit a part-time job without good cause. The decision also indicated that any wages earned and **used** on the claim would be removed, which could reduce the claimant's entitlements. (Emphasis supplied.) The employer did not agree that the claimant had voluntarily quit a part-time job, but assumed the employer's account would not be charged because wages the claimant earned from the employer would be removed.

After the employer received a quarterly statement of charges in mid-November, the employer learned that its account had been charged for benefits paid to the claimant. The employer then filed an appeal on November 19, 2008, so its account would not be charged.

REASONING AND CONCLUSIONS OF LAW:

Unless the claimant, employer 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 employer's appeal was filed after the deadlines for the March 28, May 14, and July 7 decisions for appealing expired.

The employer did not dispute and did not appeal the May 14, 2008 decision. The employer filed an appeal on November 19 because the Department did not delete the wages the claimant earned from the employer. The employer incorrectly assumed all wage credits the claimant earned from the employer would be deleted as a result of the July 7 decision.

When the claimant established his claim for benefits during the week of March 9, 2008, he established his base period. The claimant's base period is October 1, 2006, through September 30, 2007. The only wage credits the claimant earned in his base period were from the employer. If the claimant had voluntarily quit a part-time job during his base period, only wage credits from this employment could be deleted for quitting a part-time job.

The July 7 representative's decision apparently was generated because the claimant worked in late May 2008 for the employer. The July 7 decision addressed the claimant's employment and subsequent unemployed status in May 2008. Since May 2008 wages were not used to determine the claimant's monetary eligibility or weekly benefits amount on the claimant's March 9 claim, no wages he earned from the employer in May 2008 can be deleted from the claimant's base period. To relieve the employer's account from charges during the claimant's current benefit year, the employer had to appeal the March 28 decision (see decision for appeal 08A-UI-10932-DWT. If the employer had appealed the May 14 decision and the decision had been refused so the claimant had refused a suitable job offer from the employer, the employer's account would then have been relieved from any charges. Iowa Code § 96.7.2-a(2). The employer never intended to appeal the May 14 decision.

The employer acknowledged that even though the employer did not agree with the July 7 decision that the claimant quit a part-time job, the employer elected not appeal the decision.

The employer's failure to file a timely appeal was not due to any Agency error or misinformation or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) would excuse the delay in filing an appeal. The employer did not appeal the July 7 decision because the employer did not understand the law and how the employer's account could be relieved from any charges. Even if the employer had appealed the July 7 decision, the outcome most favorable to the employer would have been to disqualify the claimant from receiving benefits. Since the employer's liability was decided in the March 28 decision, if the claimant had been disqualified and then requalified during his current benefit year, the employer's account would still be subject to charge based on the wage credits the claimant earned during his base period. When the employer did not appeal the March 28 decision, the employer could have relieved its liability if the employer had appealed the May 14 and this decision had been reversed to hold the claimant refused an offer of suitable work without good cause.

The fact the employer learned in November that to relieve his account from any charges he had to file appeals from a March 28 and a May 14 decision (see decision for appeal 08A-UI-10932-DWT) does not change the fact the employer did not file a timely appeal or establish a legal excuse for filing a late appeal from any of these decision. The Appeals Section does not have legal jurisdiction to address the merits of the employer's appeal or relieve the employer's account from charge.

DECISION:

The representative's May 14, 2008 decision (reference 02) is affirmed. The employer did not file a timely appeal or establish a legal excuse for filing a late appeal. The Appeals Section has no jurisdiction to address the merits of the employer's appeal. This means the claimant remains qualified to receive unemployment insurance benefits as of April 23, 2008, and the employer's account is subject to charge.

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Debra L. Wise
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw