IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

IDA M ROBY
Claimant

BOYS & GIRLS CLUB OF WATERLOO INC
Employer

APPEAL NO. 06A-UI-10664-CT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/09/06 R: 03
Claimant: Respondent (1)

Section 96.3(5) – Duration of Benefits
Section 96.6(2) – Timeliness of Appeals

STATEMENT OF THE CASE:

Boys & Girls Club of Waterloo, Inc. filed an appeal from a representative's decision dated July 28, 2006, reference 01, which held that Ida Roby was unemployed due to a business closing. After due notice was issued, a hearing was held by telephone on November 21, 2006. The employer participated by Chris Harshbarger, Board of Directors Chair; David Juon, Board Member; Chuck Shirey, Treasurer/Board Member; and Art Hellum, Bookkeeper. The employer was represented by Jay Roberts, Attorney at Law. Ms. Roby participated personally for a portion of the hearing. She had to leave the line before the hearing was concluded because she had to attend class.

ISSUE:

At issue in this matter is whether the employer filed a timely appeal and, if so, whether Ms. Roby is unemployed due to a business closing.

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: The representative's decision that is the subject of this appeal was mailed to the employer's authorized representative on July 28, 2006. The decision advised that it would become final unless an appeal was filed by August 7, 2006. The employer's representative, TALX Corporation, did not notify the employer of the determination and no appeal was filed by the designated due date. The employer is a reimbursable employer rather than a contributory employer. The employer's reimbursements to the unemployment trust fund are handled by Joint Agencies Trust. On or about October 25, 2006, the employer was notified by Joint Agencies Trust that it had exhausted the available funds from which to make reimbursements on the employer's behalf. It was at this time that the employer became aware that at least four former employees had filed claims for job insurance benefits. The employer filed an appeal on November 1, 2006.

Ms. Roby was employed as a janitor at the employer's bingo operation located at the Cedarloo Shopping Center on University Avenue in Cedar Falls, Iowa. Approximately nine individuals worked at that location. The employer was forced to cease operations at that location on or about June 26, 2006, due to delinquent reports to the Iowa Department of Revenue and the Iowa Department of Inspections and Appeals (DIA). The bingo operation is also the subject of an investigation by the Iowa Department of Criminal Investigation regarding missing funds. The employer has been served

notice that its license to operate will be revoked. The proposed revocation is under appeal. The employer plans to resume its bingo operation at some future point, but a location has not been determined. The employer has totally vacated the building it was leasing in the shopping center in Cedar Falls.

Ms. Roby played no part in the activities that resulted in the employer having to cease its bingo operation. Once the operation closed, there was no further work for her.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the employer's appeal should be deemed timely filed. The appeal was due on August 7, 2006, but was not filed until November 1, 2006. The employer was not aware of the adverse determination until October 25, 2006. The determination was mailed to the employer's authorized representative, TALX Corporation. As such, TALX Corporation was an agent for the employer. Therefore, the question becomes whether the employer is bound by the actions, or inactions, of its agent. In a separation case, the Iowa Court of Appeals held that condonation of what would constitute job misconduct by an employer's agent is not binding on the employer if not authorized and contrary to the interests of the employer. Crane v. Iowa Department of Job Service, 412 N.W.2d 194 (Iowa App 1987). Since the employer did not have notice of the July 28, 2006 determination, it could not have authorized TALX Corporation to forgo filing an appeal. It was contrary to the employer's interest to forgo filing an appeal, without the employer's consent, where its account could incur financial liability. For the above reasons, the administrative law judge concludes that the employer shall not be bound by its agent's failure to file a timely appeal from the July 28, 2006 determination. Accordingly, the appeal filed on November 1, 2006 shall be deemed timely filed.

The next issue is whether Ms. Roby was unemployed due to a business closing. It is undisputed that the business no longer operates at the location where she was last employed. Enhanced benefits are allowed to an individual who is "laid off due to the individual's employer going out of business." Iowa Code section 96.3(5). The administrative law judge concludes that Ms. Roby was laid off due to a business closing and not through any fault of her own. The employer no longer had work for her once the operation closed. As such, she is entitled to enhanced benefits.

DECISION:

The representative's decision dated July 28, 2006, reference 01, is hereby affirmed. Ms. Roby was laid off due to her employer going out of business at the location where she was last employed. She is entitled to enhanced benefits on her claim filed effective June 25, 2006.

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Carolyn F. Coleman
Administrative Law Judge

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Decision Dated and Mailed

cfc/kjw