

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ESTHER D NEAL
Claimant

APPEAL NO: 14A-UI-02978-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 08/25/13
Claimant: Appellant (1)

Iowa Code § 96.4(4) – Second Benefit Year \$250 Wage Requirement
Iowa Code § 96.6(2) – Timeliness of Appeal

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's November 22, 2013 determination (reference 01) that held her ineligible to receive benefits as of August 25, 2013, because she had not earned \$250 since August 26, 2012. The claimant initially requested an in-person hearing. She later contacted the Appeals Bureau and asked for a telephone hearing. The claimant participated at the June 26 telephone hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge concludes the claimant is not eligible to receive benefits as of August 25, 2013, because she has not earned \$250 in wages since August 12, 2012.

ISSUES:

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

Is the claimant eligible to receive benefits as of August 25, 2013?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of August 26, 2012. After she established this claim year, she filed for and received benefits.

When the claimant's benefit year ended on August 24, 2013, she asked a representative if she could keep filing weekly claims even though she knew she was not eligible to receive benefits. The claimant wanted to file weekly claims because it motivated her to look for work. A representative told the claimant she could file weekly claims, but she was not entitled to receive benefits as of August 25, 2013.

The claimant's wage record indicates she received \$20,000.00 in wages during the first quarter of 2013. The claimant received this from a lawsuit she had filed against her former employer. The claimant has not worked or earned any wages after August 26, 2012.

The claimant knew she had money in her bank account from the money she received from the lawsuit. She did not check her bank account until late October or early November 2013. She then realized the Department had been paying her weekly benefits since August 25, 2013. The claimant contacted her local Workforce office and reported that she was receiving benefits she

was not entitled to receive. Even though the claimant reported this mistake, local representatives made her feel that she had done something wrong.

The claimant received a November 22, 2013 determination that held her ineligible to receive benefits as of August 25, 2013. The determination informed her that an appeal had to be filed or postmarked on or before December 2, 2013. The claimant did not disagree with this determination and did not appeal until she received a March 5, 2014 overpayment determination. The claimant filed an appeal on March 17, 2014.

REASONING AND CONCLUSIONS OF LAW:

The law states that an unemployment insurance determination is final unless a party appeals the determination within ten days after the determination was mailed to the party's last known address. Iowa Code § 96.6(2). The Iowa Supreme Court has ruled that appeals 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 appeal was filed after the December 2, 2013 deadline for appealing expired. The claimant did not appeal because she reported in early November that she was not eligible to receive benefits as of August 25, 2013, and did not disagree with the November 22 determination. The claimant did not file a timely appeal from the November 22, 2013 determination. The Appeals Bureau does not have any legal authority to change the November 22, 2013 determination.

If the claimant had filed an appeal from the November 22 determination, she already knew she would not be eligible to receive benefits as of August 25, 2013. If a claimant has drawn benefits in any benefit year, the claimant must, during or subsequent to that year, work in and be paid wages for insured work totaling at least \$250, as a condition to receive benefits in the next benefit year. Iowa Code § 96.4(4). The facts establish the claimant did not work and earn \$250 in wages from an insured employer from August 26, 2012, through August 25, 2013. Even though the claimant asked if she could file weekly claims knowing she would not be eligible to receive benefits, the Department incorrectly concluded the \$20,000.00 her former employer reported were wages and not a payment from a lawsuit. Payment from a lawsuit does not satisfy Iowa Code § 96.4(4).

DECISION:

The representative's November 22, 2013 determination (reference 01) is affirmed. The claimant did not file a timely appeal because she did not disagree with the determination. As of August 25, 2013, the claimant had not satisfied the \$250 wage requirement to be eligible to receive benefits in a second or subsequent benefit year. The claimant is not eligible to receive benefits as of August 25, 2013.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css