

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DIANE R SMITH
Claimant

APPEAL NO: 12A-UI-01822-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 12/25/11
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Availability for Work When Working Part Time
Iowa Code § 96.6(2) – Timeliness of Appeal

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's February 1, 2012 determination (reference 01) that held her ineligible to receive benefits because she was not considered partially unemployed. The claimant participated in the hearing. Sabrina Bentler, a representative with Corporate Cost Control, Inc., appeared on the employer's behalf with Jeremy Craft as the employer's witness. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is not eligible to receive benefits as of December 25, 2011.

ISSUE:

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

FINDINGS OF FACT:

The claimant established a claim for partial benefits during the week of December 25, 2011. She started working a part-time job for the employer in early December 1, 2011. On February 1, 2012, a representative's determination was mailed to the claimant and employer. The determination stated the claimant was not eligible to receive benefits as of December 25, 2011, because she still worked at the same hours and wages that the employer had hired her to work and could not be considered partially unemployed. The claimant does not know when she received the determination.

When the claimant received the determination she assumed her benefits would revert to and would be paid by a previous employer, Volt. She waited until February 23 to contact her local Workforce office. She waited to make sure benefits were or were not deposited into her bank account. On February 23, when she talked to a local representative she was advised to appeal. The claimant appealed that same day, February 23, 2012.

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 February 13 deadline for appealing expired. Since February 11 was a Saturday, the deadline to appeal was automatically extended to Monday, February 13, 2012.

The next question is whether the claimant had a reasonable opportunity to file an appeal in a timely fashion. *Hendren v. IDJS*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IDJS*, 212 N.W.2d 471, 472 (Iowa 1973). The evidence establishes the claimant had a reasonable opportunity to file a timely appeal, but did not because she incorrectly assumed she would receive benefits based on her previous employer.

The claimant'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 information the claimant received when she established a new benefit year in December 2011 was correct. The representative's February 1, 2012 determination was not correct. The claimant should have been held eligible to receive partial benefits and the employer's account would not be subject to charge. The employer was not even a base period employer on this claim. If the claimant had filed a timely appeal, the Appeals Section could change the February 1 determination. The claimant failed to contact her local Workforce representative on or before February 11 to make sure her understanding was correct – that she did not have to do anything to correct the February 1 determination. In this case, the claimant received the correct information about being eligible to receive partial benefits when she established her claim, but the fact finder who made the February 1 determination did not apply the law correctly. Even though the representative did not make the correct the determination, the claimant did not establish a legal excuse for filing a late appeal. As a result of waiting until February 23 instead of taking action on or before February 11, the Appeals Section has no legal jurisdiction or authority to change the February 1, 2012 determination.

DECISION:

The representative's February 1, 2012 determination (reference 01) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. The Appeals Section does not have jurisdiction or authority to address the merits of her appeal. This means the February 1 determination cannot be changed and the claimant is not eligible to receive benefits as of December 25, 2011.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs