

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER A GILLOGLY
Claimant

APPEAL NO: 12A-UI-00818-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FOCUS SERVICES LLC
Employer

OC: 12/12/10
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge
Iowa Code § 96.6(2) – Timeliness of Appeal

PROCEDURAL STATEMENT OF THE CASE:

The Appeals Section set up an appeal from a representative's January 7, 2011 determination (reference 01) for a claim established the week of December 10, 2011, after the employer appealed a January 11, 2012 determination (reference 02) for a claim year established the week of December 11, 2011. The January 7, 2011 determination held the claimant eligible to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons.

The claimant did not participate at a hearing scheduled on February 17, 2012. Chris Hislop appeared on the employer's behalf. Based on the administrative record and the law, the administrative law judge finds the employer did not file a timely appeal from the January 7, 2011 determination so this determination cannot be changed.

ISSUE:

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

FINDINGS OF FACT:

The claimant's employment ended in mid-December 2010. She established a claim for benefits during the week of December 11, 2011. After a fact-finding interview, which the employer and claimant both participated, a determination was issued on January 7, 2011. The determination held the claimant qualified to receive benefits and the employer's account subject to charge. The January 7, 2011 determination was mailed to the employer's representative, Employer Solutions Group, at a Provo, Utah address. The employer did not appeal this determination.

During December 12, 2010 claim year, the claimant received her maximum benefit amount of \$3,655.88, which was the amount charged to the employer's account. The employer's representative would have received quarterly billing statements indicating the amount charged to the employer's account and which former employee received the benefits.

The claimant established a new or subsequent benefit claim during the week of December 11, 2011. Since the claimant established a new benefit year, the employer again received a notice

of claim, which indicated the maximum amount that could be charged in the claimant's new benefit year. After the employer's representative, Employer Solution Group received a January 11, 2012 determination that indicated the December 15, 2011 employment separation had been previously adjudicated in a prior claim year, the employer appealed on January 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 employer's appeal was filed almost year after the deadline for appealing expired. The deadline to appeal was January 17, 2011.

The employer did not establish that its failure to file a timely appeal was 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. Additionally, the employer did not protest any quarterly statement of charges showing the amount charged to its account based on benefits the claimant received in 2011. Since the employer did not file a timely appeal or establish a legal excuse for filing a timely appeal, the Appeals Section does not have jurisdiction to make a decision on the merits of the appeal. This means the claimant's December 15, 2010 separation was for nondisqualifying reasons and the claimant remains qualified to receive benefits.

DECISION:

The representative's January 7, 2011 determination (reference 01) is affirmed. The employer did not file a timely appeal or establish a legal excuse for filing a late appeal from the January 7, 2011 determination. The Appeals Section does not have jurisdiction to address the merits of the employer's appeal. This means the claimant remains qualified to receive unemployment insurance benefits as of December 12, 2010. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css