

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 – EI

ALISON S NOE
Claimant

APPEAL NO. 11A-UI-06818-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CSOI CORP
Employer

**OC: 03/20/11
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Still Employed Same Hours and Wages or Partially Unemployed
Iowa Code § 96.6(2) – Timeliness of Appeal

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's April 26, 2011 determination (reference 01) that held her ineligible to receive benefits as of March 20, 2011, because she was not considered partially unemployed. The claimant participated in the hearing. Chad Smith, an area supervisor, appeared on the employer's behalf. 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 March 20, 2011.

ISSUES:

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

Is the claimant eligible to receive partial unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working as a part-time cashier for the employer in December 2009. The employer schedules her to work 16 to 24 hours a week. The claimant may not work 16 hours a week when she asks for time off.

When the claimant's full-time job ended in March 2010, she established a claim for benefits during the week of March 21, 2010. The claimant was determined eligible to receive benefits in March 2010. The employer continues to schedule the claimant to work 16 to 24 hours a week.

The claimant established a new benefit year during the week of March 20, 2011. On April 26, 2011, a representative's determination was mailed to the claimant and employer holding the claimant ineligible to receive benefits as of March 20, 2011, because she was not partially unemployed.

Even though the claimant's determination was sent to the claimant's old address, she received the determination the week of May 9, 2011. The claimant did not read the determination carefully, because she understood she could receive benefits based on wages she earned from her former full-time employer. The claimant did not file an appeal at her local Workforce office until May 23, 2011.

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 May 6, 2011 deadline for appealing expired.

The next question is whether the claimant had a reasonable opportunity to file an appeal in a timely fashion. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The evidence establishes the claimant did not have a reasonable opportunity to file a timely appeal, because it was not mailed to her current mailing address.

The claimant's failure to file a timely appeal was due in part to an Agency error, sending her determination to the wrong address, which under 871 IAC 24.35(2) excuses her delay in filing an appeal. The claimant established a legal excuse for filing a late appeal. The Appeals Section has jurisdiction to make a decision on the merits of the claimant's appeal.

Where a claimant is still employed in a part-time job at the same hours and wages as contemplated when hired and is not working a reduced workweek, the claimant cannot be considered partially unemployed. 871 IAC 24.23(26). The only employer the claimant has worked for since mid-March 2010, when she established her first claim for unemployment insurance benefits, is the employer. Her employment status has not changed since March 21, 2010. She continues to work for the employer at the same hours and wages she was hired to work. The claimant works less than 16 hours when she requests time off from work. Under this scenario, the claimant cannot be considered partially unemployed and is not eligible to receive benefits as of March 20, 2011.

DECISION:

The representative's April 26, 2011 determination (reference 01) is affirmed. The claimant did not file a timely appeal, but established a legal excuse for filing a late appeal. The Appeals Section has jurisdiction to address the merits of her appeal. During the last year, the claimant has only worked for the employer. She has worked the same number of hours she had been hired to work. Therefore, she is not partially unemployed and is not eligible to receive benefits as of March 20, 2011.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw