

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAMMI A STRIBLING
Claimant

APPEAL NO: 11A-UI-06338-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DUBUQUE COMMUNITY SCHOOL DIST
Employer

**OC: 04/18/10
Claimant: Respondent (4)**

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.6(2) – Timeliness of Appeal

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's January 14, 2011 determination (reference 04) that held the claimant eligible to receive benefits as of December 5, 2010, because she was considered able to and available for work. The claimant participated in the hearing. Amy Vandermeulen appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is eligible to receive partial benefits as of December 5, 2010, but the employer's account is not subject to charge.

ISSUES:

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

Is the claimant eligible to receive benefits as of December 5, 2010, when she has reduced the hours she works for the employer?

Is the employer's account subject to charge?

FINDINGS OF FACT:

The claimant started working for the employer in 2005. During the 2009-2010 school year, she worked 6.5 hours a day for the employer. The claimant also worked two part-time jobs and was going to school. When she was laid off from one part-time job, she established a claim for benefits during the week of April 18, 2010. In a May 21, 2010 determination, the claimant was held ineligible to receive benefits because she worked enough hours to be considered employed, not partially unemployed. No determination was issued concerning the employer's chargeability.

For the 2010/2011 school year, the claimant asked the employer to transfer her to another job so she could reduce the hours she worked. The claimant wanted to work 3.5 hours a day, but accepted a job working 4.5 hours per day. The claimant wanted her hours reduced because it

was her last year of school and she needed more time for her classes. The claimant did not file any weekly claims until the week of December 5, 2010, after she was laid off from her second part-time job.

The claimant went to her local Workforce office and reported she been laid off from her second part-time job after this business closed. She also reported that she still worked for the employer but her hours had been reduced to 22.5 hours a week after she changed her job.

When the claimant reopened her claim in early December 2010, the Department did not send the employer a notice of claim informing the employer that the claimant had reopened her claim or that the employer's account could be charged a certain amount of money. On January 14, 2011, a representative's determination was mailed to the claimant and employer indicating the claimant was eligible to receive benefits as of December 5, 2010. When the employer received the January 14 determination on or about January 17, 2011, the employer assumed its account was still exempt from charge because the employer had not received a notice of claim. The employer did not know its account was charged until April 10 when the employer received a quarterly statement of charges. On April 19, the employer sent a letter to the Tax Chargeback Unit. The Chargeback Unit then forwarded the employer's protest to the Appeals Section on May 10, 2011.

REASONING AND CONCLUSIONS OF LAW:

Unless the employer 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 after the January 24, 2011, deadline for appealing expired.

The next question is whether the employer 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 employer had a reasonable opportunity to file a timely appeal, but did not based on misinformation or a lack of information from the Department.

The employer's failure to file a timely appeal was due to an Agency error or misinformation which under 871 IAC 24.35(2) excuses the delay in filing an appeal. Since the employer established a legal excuse for filing a late appeal, the Appeals Section has jurisdiction to make a decision on the merits of the appeal.

The facts establish the claimant established a claim for benefits in April 2010 when she lost one of her part time jobs. The claimant did not effectively file any weekly until she reopened her claim in early December 2010 after she was laid off from her second part-time job. Since the employer provided the number of hours the claimant could work, the employer's account is not subject to charge.

The claimant was laid off from work from two part-time employers. Therefore, based on the wage credits she earned from the employers in her base period, the claimant is eligible to receive partial benefits as of December 5, 2010.

DECISION:

The representative's January 14, 2011 determination (reference 04) is modified in the employer's favor. The employer 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 the employer's appeal. Based on the wages credits in the claimant's base period, she is partially unemployed as of December 5, 2010. She is eligible to receive partial benefits as of December 5, 2010. The employer's account, however, is not subject to charge during this benefit year.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs