

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HELEN J BALFE
Claimant

APPEAL NO. 11A-EUCU-00529-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 03/29/09
Claimant: Appellant (1)

Public Law 110-252, Title VI – Eligibility for Benefits
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated May 20, 2011, reference 03, that concluded she was not eligible for Emergency Unemployment Compensation (EUC) effective March 27, 2011, because she was eligible for regular unemployment insurance benefits. She also appealed a decision issued the same day that concluded she was not eligible for EUC for the week ending February 12, 2011, based on a claim filed effective March 28, 2010, because she still had EUC benefits available on an older claim. A telephone hearing was held on June 21, 2011. The claimant participated in the hearing. Exhibit A-1 was admitted into evidence at the hearing. Although I conclude the appeal in this case was not timely, I believe it is important to set forth the full facts.

ISSUE:

Was the appeal in this case filed timely?

FINDINGS OF FACT:

The claimant first filed for unemployment insurance benefits with an effective date of March 29, 2009, after her employment with Flexsteel Industries ended. She exhausted the regular benefits on that claim and began receiving EUC. She started working part-time for Sedona Staffing in March 2010. She filed a claim for a second benefit year effective March 28, 2010, and was found eligible for partial unemployment insurance benefits because of her part-time job with Sedona Staffing.

She exhausted the regular benefits on claim filed in 2010 in February 2011. The Agency mistakenly paid her \$130.00 in EUC for the week ending February 12, 2011, from the claim filed in 2010. The EUC should have come from the EUC benefits she still had available on the claim filed in 2009. The Agency later re-entered the claim for the week ending February 12, 2011, on the 2009 claim and used half of amount payable (\$64.00) to offset part of the overpayment created by paying the benefits using the wrong year's claim.

On April 1, 2011, the claimant filed for a third benefit year effective March 27, 2011. Even though the claimant was monetarily eligible for regular benefits, the Agency mistakenly paid her \$77.00 in EUC for the week ending April 2 and \$80.00 in EUC for the week ending April 9, 2011. Because her weekly benefit amount on her 2011 claim is \$139.00, benefits cannot be paid out on the 2011 claim, because her wages for the weeks in question were over the earnings limit of \$154.00 for each week.

The amount of the overpayment owed is currently \$223.00, after the offset of \$64.00.

Unemployment insurance decisions were mailed to the claimant's last known address of record on May 20, 2011. The first decision concluded the claimant was not eligible for EUC benefits effective March 27, 2011, because she was eligible for regular benefits. The second decision concluded the claimant was not eligible for EUC benefits effective February 6, 2011 based on her 2010 claim, because she still had EUC benefits available on the 2009 claim. Both decisions stated they were final unless a written appeal was postmarked or received by the Appeals Section by May 30, 2011.

The claimant received the decisions within the ten-day period for appealing the decision. She filed a written appeal on June 6, 2011, which is after the time period for appealing had expired. The claimant delayed in filing her appeal because she decided to wait to see whether she was overpaid. The agency had issued decisions on May 27, 2011, determining the claimant overpaid.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant filed a timely appeal.

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. Iowa Code § 96.6-2.

The Iowa Supreme Court has ruled that appeals from unemployment insurance decisions 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 claimant's appeal was filed after the 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 claimant filed her appeal late because she was waiting to see if she was overpaid. The claimant had a reasonable opportunity to file a timely appeal.

The 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. Since the appeal was not filed timely, there is no jurisdiction to make a decision on the merits of the appeal.

DECISION:

The unemployment insurance decisions dated May 20, 2011, reference 03, are affirmed. The appeal in this case was not timely, and the unemployment insurance decisions disqualifying the claimant from receiving EUC benefits for the week ending February 12 and effective March 27, 2011, remain in effect.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw