

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACQUELINE J POHLEN
Claimant

APPEAL NO. 09A-UI-03530-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEN FUELS LLC
Employer

**Original Claim: 01/11/09
Claimant: Respondent (4/R)**

Section 9 6.6-2 – Timeliness of Appeal and Previously Adjudicated

STATEMENT OF THE CASE:

Ten Fuels LLC (employer) appealed a representative's February 17, 2009 decision (reference 02) that concluded Jacqueline J. Pohlen (claimant) was qualified to receive benefits, and the employer's account was subject because a decision had been previously made on an August 22, 2008 employment separation. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 31, 2009. The claimant participated in the hearing. Glenda Mohn, the manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

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

Has the August 22, 2008 employment separation been previously adjudicated?

FINDINGS OF FACT:

The claimant established a new benefit year during the week of January 11, 2009. The claimant had most recently worked for the employer. This job ended August 22, 2008, when the claimant resigned. This employment separation is addressed in the decision for appeal 09A-UI-03529-DWT.

On February 17, 2009, a representative's decision was mailed to the claimant and the employer that indicated the claimant was qualified to receive unemployment insurance benefits because the employment separation had been decided on a prior claim. See decision for appeal 09A-UI-03529-DWT. This decision concluded the claimant was not qualified to receive benefits, because she had voluntarily quit her employment for reasons that do not qualify her to receive benefits.

The claimant received the representative's decision on February 25, 2009. The employer faxed an appeal to a phone number that was on a Notice of Claim form. The employer did not use the fax number on the representative's decision. Later, when the employer talked to a Workforce representative, the employer learned she should fax the employer's appeal to another number, which is the Appeals Section number. The employer faxed the employer's appeal a second time on March 5, 2009.

Since January 11, 2009, the claimant has filed for and received benefits.

REASONING AND CONCLUSIONS OF LAW:

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's decision is mailed to the parties' last known address, files an appeal from the decision, the decision is final. Benefits shall then be paid or denied in accordance with the representative's decision. 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 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 employer's appeal was filed with the Department that handles protests from employers within the February 27, 2009 deadline for appealing. Since a claimant can file an appeal at a local Workforce office, the employer's February 26, 2009 appeal must also be accepted because it was faxed to the Department, just not the correct section of the Department. The evidence establishes the employer filed a timely appeal from the representative's February 17, 2009 decision.

Since the decision for appeal 09A-UI-09529-DWT addresses the claimant's August 22, 2008 employment separation, see this decision for the Findings of Fact, Reasoning and Conclusions of Law and Decision that shall be incorporated by reference in this decision.

DECISION:

The representative's February 17, 2009 decision (reference 02) is modified in the employer's favor. The employer filed a timely appeal. Therefore, the Appeals Section has jurisdiction to address the merits of the employer's appeal. However, since the decision for appeal 09A-UI-03529-DWT addresses the August 22 employment separation, this decision is incorporated by reference in this decision. The decision for appeal 09A-UI-09529-DWT holds the claimant voluntarily quit her employment without good cause. Therefore, the claimant remains disqualified from receiving benefits as of January 11, 2009. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is remanded to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw