

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LUL I ISAAQ
Claimant

APPEAL NO: 09A-UI-14186-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEDONA STAFFING
Employer

OC: 08/24/08
Claimant: Appellant (1)

Section 96.5-1-j – Voluntary Quit Temporary Employment Firm
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed a representative's December 2, 2008 decision (reference 01) that concluded she was not qualified to receive benefits as of October 29, 2008, because she had not contacted the employer about another assignment after she completed an assignment in late October 2008. A hearing was held on November 30, 2009. The claimant participated in the hearing. Colleen McGuinty appeared on the employer's behalf. An interpreter was present until the interpreter's cell phone dropped the call. The interpreter could not be contacted after her cell phone dropped the call. The hearing was then continued until January 11, 2010.

Another interpreter was available for the January 11, 2010 hearing. The claimant was called, but she was not available for the hearing. The claimant did not contact the Appeals Section to participate in the January 11, 2010 hearing. Colleen McGuinty appeared again on the employer's behalf. Based on the evidence presented during the November 30 hearing and the administrative record, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of August 24, 2008. The claimant reopened her claim during the week of November 2, 2008. On December 2, 2008, a representative's decision was mailed to the claimant and employer. The decision held the claimant was not qualified to receive benefits as of October 31, 2008, because she had not timely contacted the employer after completing a job assignment. The decision informed the parties the decision was final unless an appeal was filed on or before December 12, 2008.

The claimant started working at another job shortly after Thanksgiving in 2008. She received letters from the Department. The claimant does not have problems receiving her mail. The claimant, however, does not understand the decisions (paperwork) she receives from the

Department because she does not read English. Sometimes she has someone interpret the paperwork she receives. The claimant did not have anyone read and interpret the December 2, 2008, decision to her.

The claimant established a new benefit year during the week of August 30, 2009. When she did not receive benefits that she had filed for in September, she learned these benefits had been used to offset a previously established overpayment. At her local Workforce office, the claimant filed an appeal in this matter on September 21, 2009. The claimant then understood she had been denied benefits as of October 31, 2008, which resulted in an overpayment.

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 claimant's appeal was filed months after the December 12, 2008 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 indicates the claimant had a reasonable opportunity to file a timely appeal, but did not.

The claimant's 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. Instead, the evidence indicates the claimant received the December 2, 2008 decision, but did not have anyone read and explain the decision to her. Since the claimant was working and not filing any weekly claims when she received the decision, she may have incorrectly assumed she did not need to do anything. She did not contact her local Workforce office about the documents she received in December 2008. Since the claimant did not file a timely appeal or establish a legal excuse for filing a late appeal, the Appeals Section does not have legal jurisdiction to make a decision on the merits of the appeal. This means the December 2, 2008 decision cannot be changed and the claimant remains ineligible to receive benefits as of October 31, 2008.

DECISION:

The representative's December 2, 2008 decision (reference 01) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. The Appeals Section has no jurisdiction to address the merits of her appeal. This means the claimant remains disqualified from receiving unemployment insurance benefits as of October 31, 2008.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css