

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LORI J SCHNECKLOTH
Claimant

APPEAL NO: 11A-UI-03267-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HCM INC
Employer

**OC: 01/30/11
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed a representative's March 3, 2011 determination (reference 01) that disqualified her from receiving benefits as of January 30, 2011, because she voluntarily quit her employment for reasons that do not qualify her to receive benefits. The claimant participated in the hearing. John Schuttinga and Dawn Berrier 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 did not file a timely appeal so the determination she appealed cannot be changed.

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 January 30, 2011. On March 3, 2011, a representative's determination was mailed to the claimant and employer. The determination disqualified the claimant from receiving benefits as of January 30, 2011. The determination also informed the parties that an appeal had to be filed or postmarked no later than March 13, 2011.

The claimant received the representative's determination on March 6, 2011. She did not think about mailing an appeal to the Appeals Section because she thought it would take too long to get to the Appeals Section. The claimant did not have a ride to her local Workforce office until March 16, 2011. She filed her appeal at her local Workforce office on March 16.

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 March 14, 2011 deadline for appealing expired. Since March 13 was a Sunday, the deadline to appeal was automatically extended to Monday, March 14, 2011.

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 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) excuses a delay in filing an appeal. Since the claimant did not establish a legal excuse for filing a late appeal, the Appeals Section does not have jurisdiction to make a decision on the merits of her appeal.

DECISION:

The representative's March 3, 2011 determination (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 does not have legal jurisdiction to address the merits of her appeal. This means the claimant remains disqualified from receiving unemployment insurance benefits as of January 30, 2011. 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.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css