

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANA M SMITH
Claimant

APPEAL NO: 12A-UI-02508-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 09/11/11
Claimant: Appellant (1)

20 CFR 616.8(e) – Withhold Benefits to Offset a Nebraska Overpayment
Iowa Code § 96.6(2) – Timeliness of Appeal

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's February 27, 2012 determination (reference 03) informing her that if she was eligible to receive benefits in Iowa, her Iowa unemployment insurance benefits would be withheld to offset an overpayment she had in Nebraska. A hearing was scheduled on March 30, 2012. The claimant did not respond to the hearing notice or participate in the hearing. Based on the administrative record and the law, the administrative law judge finds the claimant did not file a timely appeal, so the February 27, 2012 determination 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 in Iowa during the week of September 11, 2011. On February 27, 2012, a representative's determination was mailed to the claimant informing her that if she was eligible to receive benefits in Iowa, they would be used to offset a previously established overpayment in Nebraska. The determination also informed her that an appeal had to be filed on or before March 8, 2012. The claimant faxed her appeal on March 12, 2012.

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 8, 2012 deadline for appealing expired.

The claimant did not establish that her failure to file a timely appeal was 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 claimant did not file a timely appeal or establish a legal excuse for filing a late appeal, the Appeals Section does not have jurisdiction to make a decision on the merits of the appeal.

DECISION:

The representative's February 27, 2012 determination (reference 03) 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 jurisdiction to address the merits of her appeal. This means that if the claimant is eligible to receive unemployment insurance from Iowa, these benefits will be sent to Nebraska to offset a previously established overpayment in Nebraska.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw