

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RUTH E KENTON**  
Claimant

**APPEAL NO: 09A-UI-15741-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CEDAR RAPIDS COMM SCHOOL DIST**  
Employer

**OC: 06/14/09**  
**Claimant: Appellant (1)**

Section 96.4-5(b) – Reasonable Assurance of Work Between Academic School Years  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant appealed a representative's July 29, 2009 decision (reference 01) that held her ineligible to receive benefits as of June 14, 2009, because she had reasonable assurance of working for the employer again in the 2009-2010 school year. A telephone hearing was held on November 23, 2009. The claimant did not respond to the hearing notice or participate in the hearing. Marlys Bitterman appeared on the employer's behalf. Based on the administrative record and the law, 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 June 14, 2009. On July 29, 2009 a representative's decision was mailed to the claimant and employer. The decision held the claimant was denied benefits as of June 14, 2009, because she had a reasonable assurance of returning to work for the employer again during the 2009-2010 school year. The decision also informed the parties the decision was final unless an appeal was postmarked or received by the Appeals Section by August 8, 2009.

The record does not indicate when the claimant received the representative's July 29, 2009 decision. The claimant filed an appeal on October 14, after she received an overpayment decision that was mailed to her on October 6, 2009. The overpayment was based on the July 29 decision that concluded the claimant was not qualified to receive benefits as of June 14, 2009.

**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 after the August 10, 2009 deadline for appealing expired. (Since August 8 was a Saturday, the claimant had until August 10, 2009, to file a timely appeal.)

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. Since the claimant did not file a timely appeal or establish a legal excuse for filing a late appeal, the Appeals Section has no legal jurisdiction to make a decision on the merits of the appeal.

**DECISION:**

The representative's July 29, 2009 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 June 14, 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.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css