

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CONANDENON Q YORK**  
Claimant

**APPEAL NO: 14A-UI-10634-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RANDSTAD GENERAL PARTNER US LLC**  
Employer

**OC: 03/16/14  
Claimant: Appellant (1)**

Iowa Code 96.5(1) – Voluntary Quit  
871 IAC 26.14(7) – Request to Reopen Hearing  
Iowa Code § 96.6(2) – Timely Appeal

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's September 23, 2014 (reference 08) determination that disqualified him from receiving benefits and held the employer's account exempt from charge because he voluntarily quit this employment for reasons that do not qualify him to receive benefits. The claimant participated at the October 31 hearing. The employer responded to the hearing notice, but was not available when called for the hearing. By the time the employer's witness was available and called back for the hearing, the claimant had been excused and the hearing had been closed. The employer requested that the hearing be reopened. Based on the employer's request to reopen the hearing, the evidence, the arguments of the parties, and the law, the administrative law judge denies the employer's request to reopen the hearing and concludes the claimant is not qualified to receive benefits.

**ISSUES:**

Is there good cause to reopen the hearing?

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

**FINDINGS OF FACT:**

The claimant reopened his clam for benefits during the week of August 24. A September 23, 2014 determination was mailed to the claimant and employer that disqualified the claimant from receiving benefits. The determination informed the parties an appeal had to be filed or postmarked on or before October 3. The claimant also received an overpayment determination that was mailed on September 24. This determination informed the claimant he had to file an appeal on or before October 4.

The claimant did not understand why he was overpaid and went to his local Workforce office on October 10. The claimant received the determinations possibly a week before but he was focusing on his classes because of midterms. The claimant was busy studying and receiving extra help with his classes.

When the claimant went to his Workforce office, a representative advised him to file an appeal. The claimant filed his appeal at the Workforce office on October 10.

Hearing notices were mailed to the parties on October 14 informing them a hearing would be held on October 31 at 8:30 a.m. The employer responded to the hearing notice, but the employer's witness was not available when she was called for the hearing. A message was left for the employer to contact the Appeals Bureau immediately. The employer's witness had been called into an unexpected meeting before the hearing. As a result of this meeting, she was not available to participate at the hearing. No one else was available either.

The employer contacted the Appeals Bureau at 9:00 a.m. By the time the employer called, the claimant had been excused and the hearing was closed. The employer made a request to reopen the hearing.

#### **REASONING AND CONCLUSIONS OF LAW:**

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c).

When the employer's witness was called into an unexpected meeting, she could have contacted the Appeals Bureau to request a continuance, but did not. Based on the facts in this case, the employer's request to reopen the hearing is denied.

The law states that an unemployment insurance determination is final unless a party appeals the determination within ten days after the determination was mailed to the party's last known address. Iowa Code § 96.6(2). The Iowa Supreme Court has ruled that appeals 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 appeal was filed after the October 3 deadline for appealing expired.

The next question is whether the claimant had a reasonable opportunity to file a timely appeal. *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 received the determination before the deadline, but was focused on school during midterms and did not file his appeal until October 10.

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. The claimant did not establish a legal excuse for filing a late appeal. The Appeals Bureau does not have any legal authority to make a decision on the merits of claimant's the appeal. This means the representative's determination cannot be changed and the claimant remains disqualified from receiving benefits.

**DECISION:**

The employer's request to reopen the hearing is denied. The representative's September 23, 2014 (reference 08) determination is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. The Appeals Bureau does not have jurisdiction to address the merits of the claimant's appeal. As of August 24, 2014 the claimant remains disqualified from receiving unemployment insurance benefits. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he 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

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