

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEVIN K PETERSON

Claimant

APPEAL NO. 10A-UI-09857-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES STAFFING SERVICES INC

Employer

OC: 3/29/09

Claimant: Appellant (1/R)

Section 96.5-1 – Voluntary Quit
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed a representative's June 29, 2010 decision (reference 02) that disqualified him from receiving benefits and held the employer's account exempt from charge because the claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits. A telephone hearing was held on August 24, 2010. The claimant and Aubrey Petersen participated in the hearing. Stacey Navarro and Dan Sethi appeared on the employer's behalf.

During the hearing, the employer requested a document entitled Temporary Employee Contract be admitted as evidence. The claimant had not received that document. This document was identified as Employer Exhibit One and mailed to the claimant on August 27, 2010. During the claimant's testimony, he asserted he had a document that proved Aubrey Peterson faxed his appeal on July 9 and not July 10. The claimant was given until September 3 to mail his supporting document and to state his objections to admitting Employer Exhibit One.

The Appeals Section received the claimant's response on September 2. Although the claimant objected to the admission of Employer Exhibit One, this document is admitted. The claimant did not send any document to support the testimony that his appeal was filed on July 9 and not July 10 as the fax indicated.

Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

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

Did the claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

After his employment with the employer ended, the claimant reopened his claim for benefits during the week of May 23, 2010. On June 29, 2010, a representative's decision was mailed to the claimant and employer. The decision disqualified the claimant from receiving unemployment insurance benefits as of May 11, 2010. The decision also informed the parties that the decision was final unless an appeal was filed or postmarked on or before July 9, 2010.

The claimant received the representative's decision in early July. The claimant believed his wife faxed his appeal from Kinko's on July 9. The faxed appeal document indicates the appeal was faxed on July 10 at 16:07. The claimant did not send in documentation to support his testimony that the appeal was faxed on July 9 and not July 10.

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). An unemployment benefits contested case is commenced with the filing, by mail, facsimile or in person, a written appeal. Iowa Code § 17A-12-9, 871 IAC 26.4(1).

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 evidence indicates the claimant appeal was faxed or filed on July 10, or one day after the deadline for appealing expired.

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 establish a legal excuse for filing a late appeal, the law does not give an administrative law judge authority to accept a late appeal, even for compelling personal reasons such as in the claimant's case. The Appeals Section does not have jurisdiction to make a decision on the merits of the appeal.

Even though the parties presented information concerning the reasons for the claimant's employment separation, this issue cannot be addressed because the appeal is not timely.

DECISION:

The representative's June 29, 2010 decision (reference 02) 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 legal jurisdiction to address the merits of his appeal. This means the claimant remains disqualified from receiving unemployment insurance benefits as of May 9, 2010. 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. An issue of overpayment is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw