

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**EMILY E LUCAS**  
Claimant

**APPEAL NO. 09A-UI-18275-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RETLAW'S RIVERSIDE**  
Employer

**Original Claim: 06 /21/09  
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 August 25, 2009 decision (reference 04) that concluded she was not qualified to receive benefits, and the employer's account was exempt from charge because she voluntarily quit her employment for reasons that do not qualify her to receive benefits. A telephone hearing was held on January 15, 2010. The claimant participated in the hearing. Jacqueline Miller, the employer's manager, appeared on the employer's behalf. 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.

**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 21, 2009. The employer hired her to work as a part-time bartender in mid-June 2009. At the time of hire, the employer knew the claimant would teach when the school year started, but understood she would work every other weekend for the employer.

In July, the claimant did not work as scheduled some days because of migraine headaches. The claimant gave the employer a two-week notice that she was resigning in late July because she wanted a vacation and to see her parents and because her school started in early August.

On August 25, 2009 a representative's decision was mailed to the claimant and employer that stated the claimant was not qualified to receive unemployment insurance benefits as of July 26, 2009, because she voluntarily quit her employment. The decision also informed the parties the decision was final unless an appeal was filed or postmarked on or before September 4, 2009.

The claimant does not remember receiving this decision, but she did receive an October 28, 2009 representative's decision in late October or early November 2009. This October 28 decision held she had been overpaid \$1,200.00 in benefits she received between July 26 and

August 15, 2009. The October 28 decision informed the claimant she had been held overpaid based on a decision made by a representative that disqualified her from benefits for voluntarily quitting her employment with the employer. The decision also informed the parties the decision was final unless an appeal was filed or postmarked on or before November 7, 2009.

The claimant wanted to know what she could do and wanted to talk to her local Workforce representative. The claimant did not go to her local Workforce office until December 7, 2009. Her local Workforce office was in another town and the claimant did not make arrangements to leave work early until this date so she could get answers to her questions. The claimant filed an appeal on December 7, 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 September 4, 2009 deadline for appealing expired.

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 that even if the claimant did not receive the August 25 decision right away, she knew in late October or early November she had been disqualified from receiving benefits because she had quit working for the employer. The claimant's failure to wait over a month before she appealed after she knew about the disqualifying and overpayment decisions establishes that she failed to make a reasonable and timely appeal after she received notice of the adverse decision.

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 does not have legal jurisdiction to make a decision on the merits of her appeal. This means the August 25, 2009 decision cannot be changed and the claimant remains disqualified from receiving benefits as of July 26, 2009.

The employer raised the issue of the claimant's availability to work in July when she missed work when she had migraine headaches. This issue will be remanded to the Claims Section to determine.

**DECISION:**

The representative's August 25, 2009 decision (reference 04) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal after she received notice of the adverse decision in late October or early November 2009. 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 July 26, 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. An issue of whether the claimant was eligible to receive benefits July 5 through July 25, 2009, because she had migraines and was unable to work all the hours the employer scheduled her to work is remanded to the Claims Section to decide.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw