

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**PEGGY A EDGE  
219 – 4TH ST NE  
WAUKON IA 52172**

**JOSEPH L ERTL INC  
PO BOX 327  
DYERSVILLE IA 52040**

**Appeal Number: 04A-UI-01163-DWT  
OC 01/12/03 R 04  
Claimant: Appellant (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The Appeals Section set up an appeal for Peggy A. Edge (claimant) from a representative's October 2, 2003 decision (reference 05) that concluded the claimant was not qualified to receive unemployment insurance benefits, and the account of Joseph L. Ertl, Inc. (employer) would not be charged because the claimant voluntarily quit her employment for reasons that do not qualify her to receive benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 24, 2004. The claimant participated in the hearing. Karla Knipper and Jane McCleam 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 did she establish a legal excuse for filing a late appeal?

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits during the week of January 12, 2003. She reopened her claim during the week of August 31, 2003. On October 2, 2003, a representative's decision was mailed to the claimant and employer. This decision indicated the claimant was not qualified to receive unemployment insurance benefits as of August 31 because she had voluntarily quit working for the employer for reasons that did not qualify her to receive benefits.

The claimant received the representative's decision. She was working at Cabela's when she received the decision and decided she would not appeal.

When the claimant was laid off from Cabela's, she established a new benefit year during the week of January 18, 2004. The claimant appealed a representative's January 28, 2004 decision that disqualified her from receiving unemployment insurance benefits because the October 2, 2003 decision was considered a final decision. The claimant mailed her appeal from the January 28, 2004 decision on January 31, 2004.

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, if the claimant appealed the October 2, 2003 decision she did so after the October 12, 2003 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 the claimant had a reasonable opportunity to file a timely appeal, but did not because she was working when she received the first decision and was not filing any claims.

The 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 an appeal from the October 2, 2003 decision was not filed timely and the claimant never intended to appeal this decision, the October 2 decision is final and the Appeals Section has no jurisdiction to review the reasons for the separation.

DECISION:

The representative's October 2, 2003 decision (reference 05) is affirmed. The claimant did not file a timely appeal because she never intended to appeal this decision. The Appeals Section has no jurisdiction to address the reasons for her separation from the employer. This means the claimant is disqualified from receiving unemployment insurance benefits as of August 31, 2003. 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.

dlw/kjf