

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MILISSA M WATSON**

Claimant

**APPEAL NO: 09A-UI-07323-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ACCESS DIRECT TELEMARKETING INC**

Employer

**OC: 01/18/09**

**Claimant: Appellant (1)**

Section 96.4-3 – Able to and Available for Work

Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Milissa M. Watson (claimant) appealed a representative's March 2, 2009 decision (reference 02) that concluded she was not eligible to receive benefits as of January 18, 2009, because she was not considered partially unemployed. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 2, 2009. The claimant responded to the hearing notice, but phone number she provided indicated the phone was not receiving calls. No one on the employer's behalf responded to the hearing notice. 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 January 18, 2009. On March 2, 2009 a representative's decision was mailed to the claimant and employer holding the claimant ineligible to receive benefits as of January 18, 2009. The decision also indicated an appeal had to be filed on or before March 12, 2009.

The record does not indicate when the claimant received the March 2 decision. The claimant did not appeal until she received an April 24, 2009 overpayment decision. The claimant filed her appeal on May 13, 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 section 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 March 12 deadline for appealing expired.

The record does not indicate the claimant's failure to file a timely appeal was 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 March 2, 2009 decision (reference 02) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. Therefore, the Appeals Section has no jurisdiction to address the merits of her appeal. This means the claimant remains ineligible to receive benefits as of January 18, 2009.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs