IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

REBECCA L BLINT
Claimant

ADECCO USA INC
Employer

APPEAL NO: 12A-UI-09620-DWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/09/11
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.6(2) – Timeliness of Appeal

PROCEDRUAL STATEMENT OF THE CASE:

The claimant appealed a representative's October 28, 2011 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt form charge because she had voluntarily quit her employment for reasons that do not qualify her to receive benefits. The claimant responded to the hearing notice, but was not available for the hearing. Tom Kuiper, a representative with UC Express, represented the employer. Julie Seager was available to testify on the employer's behalf.

When the claimant was not available for the hearing, the employer agreed to remain available until 9:45 a.m. The claimant contacted the Appeals Section at 9:52 a.m. for the 9:30 a.m. hearing. She requested that the hearing be reopened.

Based on the claimant's request to reopen the hearing, the administrative record, and the law, the administrative law judge denies the claimant's request to reopen the hearing. Also, the claimant remains disqualified from receiving benefits as of September 25, 2011.

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 established a claim for benefits during the week of January 9, 2011. On October 28, 2011, a determination was mailed to the claimant and employer. The determination informed the parties the claimant was not qualified to receive benefits as of September 25, 2011, because she had voluntary quit her employment. The determination also stated that if the determination denied benefits and was not reversed on appeal, it may result in an overpayment that the claimant would be required to repay. Finally, the determination informed the parties that an appeal had to be filed or postmarked on or before November 7, 2011.

On July 31, 2012, a determination was mailed to the claimant informing her she had been overpaid $649.00 in benefits she received for the weeks between September 25 and October 15, 2011, because the October 28, 2011 determination disqualified her from receiving benefits. The claimant did not appeal any determination until August 10, 2012.

The claimant indicated in her appeal letter that she thought she received her benefits from Select Staffing, not the employer. The employer is the claimant's only base period employer during this claim year.

The claimant responded to the hearing notice, but did not answer her phone when she was called for the hearing. The claimant's home does not get good cell phone reception, but she was at home when she was called for the hearing. The claimant forgot the hearing was scheduled on September 20 at 9:30 a.m. When she left her house, she received notice she had a voice message. After listening to the message left by the administrative law judge, she called the Appeals Section. By the time the claimant called, the employer had been excused and the hearing had been closed. The claimant requested the hearing be reopened.

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). The facts establish the claimant forgot about the scheduled September 20 hearing and knew she did not get good reception at her home. Since it is the parties' responsibility to make sure they have good cell reception if they choose to use a cell phone, it is assumed that if the claimant had not forgotten about the hearing she would have been at location with good cell phone reception at 9:30 a.m. Forgetting about the hearing, does not establish good cause to reopen the hearing. Therefore, her request to reopen the hearing is denied.

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision 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 months after the November 7, 2011 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 timely appeal, the Appeals Section does not have any legal authority to make a decision on the merits of the appeal. This means the October 28, 2011 determination disqualifying the claimant from receiving benefits as of September 25, 2011, cannot be changed.

DECISION:

The claimant's request to reopen the hearing is denied. The representative's October 28, 2011 determination (reference 01) is affirmed. The claimant did not file a timely appeal or establish a

legal excuse for filing a late appeal on August 10, 2012. The Appeals Section does not have jurisdiction to address the merits of the claimant's appeal. This means the claimant remains disqualified from receiving benefits as of September 25, 2011. 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.

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Debra L. Wise
Administrative Law Judge

_____
Decision Dated and Mailed

dlw/css