

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL E FLUHARTY
Claimant

APPEAL NO. 10A-UI-16963-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 09/26/10
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated October 21, 2010, reference 01, that concluded he voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on January 27, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Steve Zaks participated in the hearing on behalf of the employer with a witness, Travis Poli. Exhibit A-1 was admitted into evidence at the hearing.

ISSUE:

Was the appeal in this case filed timely?

FINDINGS OF FACT:

An unemployment insurance decision was mailed to the claimant's last known address of record on October 21, 2010. The decision disqualified the claimant and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by October 31, 2010.

The claimant received the decision within the ten-day period for appealing the decision. He filed a written appeal on December 11, 2010, which is after the time period for appealing had expired. The claimant delayed in filing his appeal because he was trying to get some supporting medical documents.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claim filed a timely appeal.

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 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 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 claimant filed his appeal late because he was he was trying to get some supporting medical documents.. The claimant had a reasonable opportunity to file a timely appeal. He could have sent a letter of appeal within the ten days and supplemented it afterward.

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 the appeal was not filed timely, there is no jurisdiction to make a decision on the merits of the appeal.

DECISION:

The unemployment insurance decision dated October 21, 2010, reference 01, is affirmed. The appeal in this case was not timely, and the unemployment insurance decision disqualifying the claimant from receiving benefits remains in effect.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw