

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHEILA L WOOD
Claimant

APPEAL NO: 12A-UI-10703-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

**OC: 01/23/11
Claimant: Appellant (1)**

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

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's March 10, 2011 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge. The claimant participated in the hearing. The employer did not respond to the hearing notice or participate in the hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge finds the claimant did not file a timely appeal. Therefore, the March 10, 2011 determination cannot be changed.

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 23, 2011. On March 10, 2011, determination was mailed to the claimant and employer. The determination held the claimant was not eligible to receive benefits as of January 23, 2011. The determination informed the claimant that if the determination denied her benefits and was not reversed on appeal, it may result in an overpayment that she would be required to repay. The determination also informed the parties that the determination became final unless an appeal was filed or postmarked on or before March 20, 2011.

The claimant received the March 10, 2011 determination shortly after it had been mailed. She did not understand the unemployment insurance laws and did not think this employer paid any of the benefits she received. As a result of the claimant not understanding unemployment insurance laws and regulations, she did not file an appeal until she received an August 23, 2012 overpayment determination.

REASONING AND CONCLUSIONS OF LAW:

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 after the March 21, 2011 deadline for appealing expired. (Since March 20 was a Sunday, the deadline to appeal automatically extended to Monday, March 21, 2011.)

The next question is whether the claimant had a reasonable opportunity to file a timely appeal. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant had a reasonable opportunity to appeal, but did not based on her inaccurate understanding of the law.

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 late appeal, the Appeals Section does not have any legal authority to make a decision on the merits of the appeal. This means the March 10, 2011 determination cannot be changed and the claimant remains disqualified from receiving benefits as of November 24, 2010.

DECISION:

The representative's March 10, 2011 determination (reference 01) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. Therefore the Appeal Section does not have any legal authority to address the merits of the claimant's appeal, which means the March 10, 2011 determination cannot be changed. The claimant remains disqualified from receiving unemployment insurance benefits as of November 24, 2010. 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.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs