

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LETICIA T VILLANUEVA**  
Claimant

**APPEAL NO: 09A-UI-17206-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CAMBRIDGE TEMPOSITIONS INC**  
Employer

**OC: 07/12/09**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant appealed a representative's August 21, 2009 decision (reference 01) that disqualified her from receiving benefits, and held the employer's account exempt from charge because she voluntarily quit her employment for reasons that do not qualify her to receive benefits. A telephone hearing was scheduled on December 22, 2009. The claimant participated in the hearing. Will Ortega 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 establish a legal excuse for filing a late appeal?

**FINDINGS OF FACT:**

The claimant established a claim for benefits during the week of July 12, 2009. On August 21, 2009, a representative's decision was mailed to the claimant and employer. The decision disqualified the claimant from receiving benefits as of July 12, 2009. The decision also informed the parties the decision was final unless an appeal was postmarked or received by the Appeals Section on or before August 31, 2009.

The claimant received the August 21 decision on August 24, 2009. The claimant did not have her own transportation to get to her local Workforce office until September 4, 2009. On September 4, 2009, the claimant gave her appeal to her local Workforce office. The claimant had not thought about mailing her appeal to the Appeals Section.

The claimant's local Workforce office did not forward her appeal to the Appeals Section or the claimant's appeal was lost. The Appeals Section did not receive the claimant's September 4 appeal letter. After the claimant received an October 28, 2009 overpayment decision, she checked into her appeal. After learning the Appeals Section did not receive her first appeal letter, the claimant submitted her second appeal letter on November 4, 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 § 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 first appeal was filed after the August 31, 2009 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. The claimant received the August 21 decision on August 24 but did not go to her local Workforce office until September 4 or after the August 31 deadline for appealing the decision.

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 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 her appeal.

## DECISION:

The representative's August 21, 2009 decision (reference 01) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. The Appeals Section has no jurisdiction to address the merits of her appeal. This means the claimant remains disqualified from receiving unemployment insurance benefits as of July 12, 2009. 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

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Decision Dated and Mailed

dlw/css