

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELISSA S CURTISS
Claimant

APPEAL NO: 14A-UI-04474-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMPASS GROUP
Employer

OC: 10/06/13
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 April 18, 2014 determination (reference 06) that disqualified her from receiving benefits and held the employer's account exempt from charge because she voluntarily quit for reasons that do not qualify her to receive benefits. The claimant participated at the May 19 hearing. The employer did not participate at the hearing. The administrative law judge received information that the employer's hearing notice was returned as undeliverable. Based on the evidence, the claimant's arguments, and the law, the administrative law judge concludes the claimant remains disqualified from receiving benefits as of February 17, 2014, because she did not file a timely appeal.

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 October 6, 2013. She reopened her claim the week of March 30, 2014. On April 18, 2014, a determination that disqualified the claimant from receiving benefits was mailed to the claimant and to the employer. The claimant's determination was mailed to her correct mailing address. In addition to holding the claimant disqualified from receiving benefits, the determination informed the parties an appeal had to be filed or postmarked on or before April 28, 2014. The claimant received the determination shortly after it was mailed.

After receiving the determination, the claimant was not sure how to appeal. She forgot she had been denied and did not set up an appointment to talk to a local Workforce representative. The claimant had the April 18 determination about two weeks before she talked to a local Workforce representative on May 1, 2014. The claimant filed her appeal on May 1, 2014.

REASONING AND CONCLUSIONS OF LAW:

The law states that an unemployment insurance determination is final unless a party appeals the determination within ten days after the determination 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 April 28, 2014 deadline for appealing expired.

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 evidence establishes the claimant received the determination in time to file a timely appeal, but did not.

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) excuses the delay in filing an appeal. The claimant did not establish a legal excuse for filing a late appeal. The Appeals Bureau does not have any legal authority to make a decision on the merits of her appeal. This means the April 18, 2014 determination cannot be changed.

DECISION:

The representative's April 18, 2014 determination (reference 06) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. The Appeals Bureau does not have legal authority to address the merits of the claimant's appeal. Therefore, the claimant remains disqualified from receiving benefits as of February 17, 2014. 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/css