

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALVARO R GONCALVES

Claimant

APPEAL NO: 09A-UI-09842-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC

Employer

OC: 05/17/09

Claimant: Appellant (1)

Section 96.5-1 –Voluntary Quit

Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Alvvaro R. Goncalves (claimant) appealed a representative's June 19, 2009 decision (reference 01) that concluded he was not qualified to receive benefits, and the account of CRST Van Expedited, Inc. (employer) would not be charged because the claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 27, 2009. The claimant participated in the hearing. Sandy Matt, a human resource specialist, 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 claim for benefits during the week of May 17, 2009. On June 19, 2009 a representative's decision was mailed to the claimant and employer indicating the claimant was not qualified to receive unemployment insurance benefits as of May 17, 2009. The decision also informed the parties the decision was final unless an appeal was filed on or before June 29, 2009.

The claimant received the representative's decision before June 29, 2009. The claimant was not available to work until early July and he believed the employer would rehire him so there was no need to appeal the June 19, 2009 decision. After the claimant contacted the employer and asked about returning to work, the claimant learned some of the employer's policies had changed which prevented the employer from rehiring the claimant. The claimant did not learn the employer would not rehire him until after July 1, 2009. On July 9, 2009, the claimant faxed his appeal letter to the Appeals Section.

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 appeal was filed after the June 29, 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'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. The claimant did not file a timely appeal because he assumed the employer would rehire him and he would start driving for the employer again in early July. While the administrative law judge understands why the claimant did not file a timely appeal, the employer did not guarantee he would be rehired.

The result in this decision may seem harsh but administrative law judges do not make laws. Instead, the law must be applied to each case. In this case, the administrative law judge personally does not like the outcome of this case, but the claimant did not establish a legal excuse for filing a late appeal. As a result, the Appeals Section has no jurisdiction to make a decision on the merits of the claimant's appeal even though the parties presented testimony about this issue.

DECISION:

The representative's June 19, 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 his appeal. This means the claimant remains disqualified from receiving unemployment insurance benefits as of May 17, 2009. This disqualification

continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css