

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSHUA B ARCELO
Claimant

APPEAL NO. 11A-EUCU-00676-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMP ASSOCIATES - MARSHALLTOWN
Employer

OC: 03/04/07
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 January 20, 2011, reference 05, that concluded he voluntarily left employment without good cause attributable to the employer. A telephone hearing was held on September 15, 2011. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Judy Rebik participated in the hearing on behalf of the employer and agreed that a decision could be made based on the information in the file.

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 January 20, 2010. The decision concluded the claimant voluntarily left employment without good cause and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by January 30, 2010. The decision also stated that, "If this decision denies benefits and is not reversed on appeal, it may result in an overpayment that you will be required to repay."

The claimant received the decision within the ten-day period for appealing the decision. For some reason, the claimant did not appeal the disqualification decision at that time. Instead, he filed a written appeal on August 18, 2011, after he received an overpayment decision dated August 8, 2011, that resulted from the agency mistakenly paying him emergency unemployment compensation benefits despite the disqualification.

After the hearing had concluded, the claimant called the Appeals Section around noon and admitted he had not followed the instructions on the hearing notice that required him to call in and provide his telephone number. He stated that he used his mother's mailing address as where he received mail and did not get the hearing notice until September 14.

REASONING AND CONCLUSIONS OF LAW:

When a claimant fails to participate in the hearing by not providing a telephone number to call, the hearing can be reopened if good cause is shown for the failure to call in. No good cause has been established in this case to reopen the hearing.

The next but issue in this case is whether the claimant filed a timely appeal from the disqualification decision.

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 evidence establishes the claimant had a reasonable opportunity to file a timely appeal.

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 January 20, 2011, reference 05, 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/css