

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

**CRESTINA M STEPHENSON
1320 E 29TH ST
DES MOINES IA 50317-8327**

APPEAL NO. 09A-UI-18705-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**HY-VEE INC
c/o UNEMPLOYMENT INSURANCE SVCS
PO BOX 7072
LEE'S SUMMIT MO 64064-7072**

APPEAL RIGHTS:

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to:

***Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319***

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

The name, address and social security number of the claimant.

A reference to the decision from which the appeal is taken.

That an appeal from such decision is being made and such appeal is signed.

The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CRESTINA M STEPHENSON
Claimant

APPEAL NO. 09A-UI-18705-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

**Original Claim: 10/04/09
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 October 30, 2009 decision (reference 02) that concluded she was not qualified to receive benefits, and the employer's account was exempt from charge because the claimant voluntarily quit her employment for reasons that do not qualify her to receive benefits. A telephone hearing was held on January 26, 2010. The claimant participated in the hearing. Tisha Wallace was available to testify on the claimant's behalf. Tim Speir, a representative with Unemployment Insurance Services, appeared on the employers' behalf. Katie Gemaehlich and Ryan Roberts were present to testify 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 October 4, 2009. On October 30, 2009, a representative's decision was mailed to the claimant and employer indicating the claimant was not qualified to receive unemployment insurance benefits because she had voluntarily quit her employment.

The claimant received the representative's decision before the November 9, 2009 deadline to appeal. Initially, the claimant decided she would not appeal. Sometime after November 9, the claimant contacted the employer and received information that changed her mind about appealing the decision. When the claimant reopened her claim on December 15, a local Workforce representative encouraged the claimant to file an appeal after she explained the appeal process to the claimant. The claimant filed her appeal on December 15, 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 appeal was filed after the November 9, 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 do so.

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 initially decided she would not appeal the decision. After November 9, the claimant contacted the employer and a Department representative. After the claimant learned about the appeal process and after she received some information from the employer, she decided to appeal the October 30, 2009 more than a month after the deadline to appeal had passed. Based on the facts in this case, the claimant did not establish a legal excuse for filing a late appeal. Therefore, the Appeal Section has no legal jurisdiction to make a decision on the merits of the appeal.

DECISION:

The representative's October 30, 2009 decision (reference 02) 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 legal jurisdiction to address the merits of her appeal. This means the claimant remains disqualified from receiving unemployment insurance benefits as of October 4, 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.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw