

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PHILIP M KEATING
Claimant

APPEAL NO. 09A-UI-11492-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CUMULUS BROADCASTING LC
Employer

**Original Claim: 04/05/09
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Philip M. Keating (claimant) appealed a representative's June 5, 2009 decision (reference 01) that concluded he was not qualified to receive benefits, and the account of Cumulus Broadcasting LLC (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 August 26, 2009. The claimant participated in the hearing. Heather Davis 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 new benefit year during the week of April 5, 2009. On June 5, 2009, a representative's decision was mailed to the claimant and employer. This decision held the claimant was not qualified to receive unemployment insurance benefits as of April 5, 2009, because he had voluntarily quit his employment for reasons that did not qualify him to receive benefits. When the claimant received this decision, he had already stopped filing claims. He did not notice that he could be held overpaid if the decision was not reversed. Initially, the claimant decided he would not appeal.

After the claimant received an August 4 decision that held him overpaid \$1,518.00 in benefits he received for the weeks ending April 11 through May 16, 2009, the claimant then appealed. He filed his appeal on August 11, 2009.

The claimant started working for the employer on August 4, 2008. The employer hired the claimant to work full-time. Before the claimant accepted the job, the employer told him that part of his job involved telemarketing. On August 25, 2008, the claimant left a voice mail message for Davis indicating he was not returning to work. The claimant quit because the job was not what he thought it would be. The claimant's job was not in jeopardy when he resigned. If the claimant had not resigned, he would have continued his employment.

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 15, 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. Since the claimant did not file a timely appeal or establish a legal excuse for filing a late appeal, the Appeals Section does not have legal jurisdiction to make a decision on the merits of the appeal.

In the alternative, if the Appeals Section had jurisdiction to make a decision on the merits, the evidence establishes the claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits. The law presumes a claimant voluntarily quits without good cause when he leaves because of dissatisfaction with the work environment. 871 IAC 24.25(21).

Under either scenario, the claimant is not qualified to receive benefits as of April 5, 2009.

DECISION:

The representative's June 5, 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 does not have jurisdiction to address the merits of his appeal. This means the claimant remains disqualified from receiving unemployment insurance benefits as of April 5, 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/kjw