

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BEVERLY J SAMS
Claimant

APPEAL NO: 13A-UI-08050-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARKETLINK INC
Employer

OC: 05/26/13
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.6(2) – Timeliness of Appeal

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's June 14, 2013 determination (reference 05) that held her ineligible to receive benefits as of May 26, 2013, because she was ill and unable to work. The claimant participated in the hearing. Amy MacGregor appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant was not available for work and is not eligible to receive benefits for the weeks ending June 1 and 8, 2013.

ISSUES:

Did the claimant file a timely appeal or establish a legal excuse for filing a late appeal?

Was the claimant unable to work and ineligible to receive benefits as of May 26, 2013?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of May 26, 2013. The claimant called in sick the week ending May 31, 2013. Sometime between May 26 and June 8, a family member passed away. The claimant acknowledged she was not available to work the weeks ending June 1 and 8, 2013.

The claimant filed claims for the weeks ending June 1 and 8, 2013. A June 14, 2013 determination was mailed to the claimant and employer. The determination held the claimant ineligible to receive benefits as of May 26, 2013, because she was unable to work. The determination also informed the parties that this was final unless an appeal was filed or postmarked on or before June 24, 2013.

The claimant went to her local Workforce office after she received the June 14 determination. A representative advised the claimant to provide a doctor's statement indicating when the claimant was able to work. The claimant asserted she provided this statement, but this statement was not provided during the August 14 hearing. The Department may have received a doctor's statement which prompted a June 19 determination. A June 19 determination was mailed to the

claimant holding her overpaid for benefits she received for the weeks ending June 1 and 8, 2013. The claimant filed a written appeal on July 3, 2013, when she again went to her local Workforce office.

REASONING AND CONCLUSIONS OF LAW:

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 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). The claimant did not file an appeal by June 24, 2013, the deadline to appeal the June 14 determination.

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 establish a legal excuse for filing a timely appeal. The Appeals Section does not have any legal authority to make a decision on the merits of the appeal.

In the alternative, if the claimant had established a legal excuse for filing a late appeal, the claimant would still be ineligible to receive as of May 26, 2013, because she voluntarily quit her employment without good cause. See decision for appeal 13A-UI-08052-DWT. Also she admitted she was not available to work the weeks ending June 1 and 8, 2013.

DECISION:

The representative's June 14, 2013 (reference 05) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. Even if the claimant had established a legal excuse for filing a late appeal, as of May 26, 2013, she is disqualified from receiving benefits based on the reasons for her employment separation. See decision for appeal 13A-UI-08052-DWT.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css