

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TRUDY M PENDERGAST**  
Claimant

**APPEAL NO. 12A-UI-07539-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GODBERSEN-SMITH CONST CO**  
Employer

**OC: 03/11/12**  
**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 May 22, 2012, reference 05, that concluded she voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on July 18, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Dan Skirvin participated in the hearing on behalf of the employer.

**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 May 22, 2012. The decision concludes she voluntarily quit employment without good cause attributable to the employer and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by June 1, 2012.

The claimant received the decision within the ten-day period for appealing the decision. She filed a written appeal on June 18, 2012, after receiving a decision that she was overpaid unemployment insurance benefits. She delayed in filing her appeal because she thought she could still receive benefits from other employers and did not realize this decision disqualified her from receiving any benefits.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant filed a timely appeal.

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 claimant filed her appeal late because she thought she could still receive benefits from other employers and did not realize this decision disqualified her from receiving any benefits. 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 May 22, 2012, 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.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs