

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TERESA L FAILOR**

Claimant

**APPEAL NO: 10A-UI-00514-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MANPOWER TEMPORARY SERVICES**

Employer

**OC: 08/23/09**

**Claimant: Appellant (1R)**

Section 96.5-3-a – Refusal of Suitable Work

Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The employer filed an appeal from a representative's December 1, 2009 decision (reference 02) appeal 09A-UI-18331. A hearing notice was mailed on December 15 informing the parties a telephone hearing was scheduled on January 19, 2010. Another representative's decision was issued on December 18, 2009 (reference 03) that held the claimant ineligible to receive benefits as of September 21, 2009, because she had refused recall to suitable work. The claimant assumed the December 18 issues would automatically be included in the January 19, 2010 appeal hearing.

The claimant requested an in-person hearing on January 12, 2010 and the January 19 telephone hearing was postponed. A telephone hearing was then scheduled on April 9, 2010. This hearing only covered the issue of whether the claimant filed a timely appeal from the December 18, 2009 decision. The claimant participated in the hearing with her attorney, Rodney Kleitsch. The employer did not respond to the hearing notice or participate in the hearing. Based on the evidence, the arguments of the claimant, 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 August 23, 2009. On December 1, 2009, a representative's decision (reference 02) was mailed to the claimant and employer. The decision held the claimant eligible to receive benefits because her October 20, 2009 employment separation was for nondisqualifying reasons. The employer appealed this decision. On December 15, 2009, a hearing notice was sent to both parties indicating a telephone hearing for appeal 09A-UI-18331 would be held on January 19, 2010.

On December 18, 2009, another decision (reference 03) was mailed to the claimant and the employer. This decision held the claimant was not qualified to receive benefits as of

September 21, 2009, because she had refused recall to suitable work. The decision informed the parties the decision was final unless an appeal was filed or postmarked on or before December 28, 2009.

The claimant received the December 18 decision shortly after or about the same time she received a hearing notice informing her about the appeal hearing scheduled on January 19, 2010. The claimant did not file a written appeal because she assumed the January 19, 2010 hearing would also cover December 18 decision. The claimant went to Legal Services for assistance sometime in January. On January 12, 2010, the claimant sent the Appeals Section a written statement indicating she wanted an in-person hearing. The Appeals Section considered the claimant's January 12 letter as an appeal from the December 18, 2009 decision. As a result appeal 10A-UI-00514 was established.

### **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). An unemployment benefits contested case is commenced with the filing, by mail, facsimile or in person, a written appeal. Iowa Code § 17A-12-9, 871 IAC 26.4(1). This means if a party wants to appeal, a written appeal must be filed to start the appeal process.

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 only written letter the claimant sent to the Appeals Section was the January 12, 2010 request for an in-person hearing. If the claimant had not made this written request, no appeal would have been set up for the December 18 decision. Considering the evidence most favorable to the claimant, the claimant filed an appeal on January 12, 2010. The claimant's appeal was filed after the December 28, 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 written appeal, but did not.

The claimant asserted she made a good faith error when she incorrectly assumed the January 19 hearing would also cover the issues addresses in the representative's December 18 decision even though she did not send the Appeals Section a letter indicating she disagreed with the decision. The administrative law judge takes judicial notice that on the back side of the December 18, 2009 decision, there is a section entitled: Your Appeal Rights and Procedures. This section informs parties a letter or appeal form can be submitted by mail or by fax. The written notice of appeal must be sent directly to the Appeals Section and postmarked or received within ten calendar days from the date indicated on the decision or the right to a hearing could be lost.

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 file a timely appeal from the December 18, 2009 decision or establish a legal excuse for filing a late appeal. Making an incorrect assumption does not constitute a legal excuse. As a result the Appeals Section has no legal jurisdiction to address the merits of the claimant's appeal from the December 18, 2009 decision. This means the claimant is not qualified to receive benefits as of September 21, 2009.

An issue of overpayment is remanded to the Claims Section to determine.

**DECISION:**

The representative's December 18, 2009 decision (reference 03) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. Therefore, the Appeals Section has no legal jurisdiction to address the merits of the claimant's appeal. This means the claimant remains disqualified to receive unemployment insurance benefits as of September 21, 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. An issue of overpayment is Remanded to the Claims Section to determine.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css