

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

<b>SHANNON R ROBINSON</b> Claimant	<b>APPEAL NO: 07A-UI-02969-DWT</b>
<b>CARE INITIATIVES</b> Employer	<b>ADMINISTRATIVE LAW JUDGE DECISION</b>
	<b>OC: 01/14/07 R: 03 Claimant: Appellant (1)</b>

Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Shannon R. Robinson (claimant) appealed a representative's February 27, 2007 decision (reference 04) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Care Initiatives (employer) would not be charged because the claimant voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 11, 2007. The claimant participated in the hearing. Alyce Smolsky, a representative with TALX, appeared on the employer's behalf with Dan Donahue as a witness. 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 unemployment insurance benefits during the week of January 14, 2007. On February 27, 2007, a representative's decision was mailed to the claimant and employer. This decision informed the parties the claimant was not qualified to receive unemployment insurance benefits as of January 14, 2007.

The claimant received the representative's decision by March 1 or 2, 2007. The claimant read the decision and initially decided she would not appeal.

On March 16, 2007, another representative's decision was mailed to the claimant. This decision held she had been overpaid over \$400.00 in benefits she received for the weeks ending January 20 through February 3, 2007, because the February 27, 2007 decision had disqualified her from receiving unemployment insurance benefits. After the claimant received the March 16 overpayment decision, she decided to appeal. The claimant filed her appeal on March 23, 2007, within the ten-day appeal deadline of the March 16, 2007 decision.

## 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 section 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 from the February 27 decision was filed after the March 9, 2007 deadline for appealing this decision. The appeal the claimant filed on March 23 was timely with respect to the March 16, 2007 overpayment decision.

The next question is whether the claimant had a reasonable opportunity to file an appeal from the February 27 decision 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 from the February 27, 2007 decision, but did not.

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 from the February 27 decision, the Appeals Section has no jurisdiction to make a decision on the merits of the appeal.

## DECISION:

The representative's February 27, 2007 decision (reference 04) 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 jurisdiction to address the merits of her appeal. This means the claimant is disqualified from receiving unemployment insurance benefits as of January 14, 2007. 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.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs