

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHANIE H DELANEY
Claimant

APPEAL NO: 11A-UI-13123-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SALON LUCE'
Employer

OC: 07/31/11
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of Appeal

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's September 23, 2011 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated at the October 27 hearing with her attorney, David Millage. William Stengel, attorney at law, represented the employer. Tawnie Heinisch was at the hearing on the claimant's behalf. DaMel and Craig Smith appeared on the employer's behalf.

The claimant requested a continuance. The request for a continuance was modified so only the timeliness of appeal would be addressed at the October 27 hearing. Evidence relating to the timeliness of the claimant's appeal was presented at the hearing. If the claimant established she filed a timely appeal or was there a legal excuse for her filing late appeal, another hearing will be scheduled on the merits of her appeal.

Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the Appeals Section does not have jurisdiction to address the merits of the claimant's appeal.

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 July 31, 2011. On September 23, 2011, a representative's determination was mailed to the claimant and employer. The determination held the claimant disqualified from receiving benefits as of July 31, 2011. The determination also informed the parties an appeal had to be filed or postmarked on or before October 3, 2011.

The claimant received the representative's determination on October 3, 2011. She does not have problems receiving mail at her residence. On October 3, she picked up her mail when she

came home to let out her dog. The claimant noticed the deadline date to file an appeal was that day, October 3.

The claimant wanted to contact her attorney before she did anything. The claimant contacted her attorney the next day and made an appointment. With her attorney's assistance, the claimant filed her appeal by fax on October 5, 2011.

REASONING AND CONCLUSIONS OF LAW:

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's determination is mailed to the parties' last-known address, files an appeal from the determination; it is final. Benefits shall then be paid or denied in accordance with the representative's determination. Iowa Code § 96.6(2). Appeals are considered filed when postmarked if mailed *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). A party can file a written appeal by mail, facsimile or in person. Iowa Code § 17A-12(9), 871 IAC 26.4(1).

The Iowa Supreme Court has ruled that appeals from unemployment insurance determinations must be filed within the time limit set by statute and the administrative law judge has **no authority** to review a determination 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). (Emphasis added.) In this case, the claimant's appeal was filed after the October 3 deadline for appealing expired. The claimant filed a late appeal.

The next question is whether the claimant had an opportunity to file a timely appeal. *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 an opportunity to file a timely appeal, but did not. If the claimant was looking for the determination as she testified, she would have gone through her mail on October 3 when she picked it up. Also, the claimant testified she usually does not receive much mail. If she does not receive very much mail, it is difficult to understand why she did not notice that she received the decision she had been waiting for and open it immediately.

The question of whether the claimant had an opportunity to file a timely appeal centers on her credibility. Based on her testimony and the inconsistencies noted above, the claimant's testimony is not deemed credible. If the claimant received the determination on October 3 as she testified, she knew her appeal was due that day. Even knowing she had to file an appeal on October 3, she made the decision not to mail an appeal letter before she talked to her attorney. If claimant had appealed and her attorney did not want her to appeal, the claimant could have simply withdrawn her appeal. To appeal, the claimant could have simply stated, "I wish to appeal the representative's September 23 decision." The claimant failed to take reasonable and prudent steps to preserve her appeal rights. The claimant did not establish a legal excuse for filing a late appeal. 871 IAC 24.35(2).

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 jurisdiction to make a decision on the merits of the appeal.

DECISION:

The representative's September 23, 2011 determination (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 her appeal. This means a hearing on the merits of the claimant's late appeal cannot be scheduled. The claimant remains disqualified from receiving unemployment insurance benefits as of July 31, 2011. 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.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs