

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WENDY S KIZER
Claimant

APPEAL NO: 12A-UI-07398-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 01/01/12
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.6(2) – Timeliness of Appeal

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's March 5, 2012 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she voluntarily quit her employment on October 19, 2011, for reasons that do qualify her to receive benefits. The claimant participated in the hearing. Sabrina Bentler, a representative with Corporate Cost Control, Inc., appeared on the employer's behalf. Cathy Norgard, the human resource manager, testified on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant did not establish a legal excuse for filing a late appeal so the March 5 determination cannot be changed.

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 January 1, 2012. On March 5, 2012, a determination was mailed to the claimant and employer. The determination held the claimant was not qualified to receive benefits as of October 19, 2011. The determination also informed the claimant that if the determination denied her benefits and was not reversed on appeal, this could result in an overpayment of benefits that she would be required to repay. Also, the determination informed the parties the determination was final unless an appeal was filed or postmarked on or before March 15, 2012.

The claimant received the determination, but does not remember exactly when she received it. The claimant was busy with school and since she had been held monetarily eligible to receive benefits, she did not understand why she received a determination that held she was not qualified to benefits because she had voluntarily quit. The claimant did not contact her local Workforce office to ask why she received the March 5 determination. She did nothing about the March 5 determination until she received an overpayment determination. This determination was mailed to her on May 29, 2012. She filed her appeal on June 21, 2012.

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 filed her appeal after the March 15, 2012 deadline for appealing expired. The claimant filed a late appeal.

The next question is whether the claimant had a reasonable 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 indicated the claimant had an opportunity to file a timely appeal but did not because she was preoccupied with her school studies. 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 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. This means the March 5, 2012 determination cannot be changed and the claimant remains disqualified from receiving benefits.

(The parties provided evidence about the reasons for the claimant's separation. Since the Appeal Section does not have jurisdiction to address the merits of the claimant's appeal, findings about this issue are not presented in the decision.)

DECISION:

The representative's March 5, 2012 determination (reference 01) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. Therefore, the Appeals Section does not have any legal authority to review the reasons for the claimant's employment separation. This means the claimant remains disqualified from receiving unemployment insurance benefits as of October 19, 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/kjw