

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AIDA D LOZANO CAMACHO
Claimant

APPEAL NO. 10A-UI-11892-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STELLAR MANAGEMENT GROUP V INC
Employer

OC: 07/04/10
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit
Section 96.6-2 – Timeliness of Appeal

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's August 4, 2010 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had voluntarily quit her employment without good cause. The claimant participated in the telephone hearing. Myra Deluna, the human resource coordinator, appeared on the employer's behalf. Ike Rocha interpreted the hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant remains disqualified from receiving benefits.

ISSUES:

Did the claimant file a timely appeal or establish a legal excuse for filing a late appeal?

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits, or did the employer discharge her for work-connected misconduct?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of July 4, 2010. On August 4, 2010, a representative's determination was mailed to the claimant and employer. The representative held the claimant was not qualified to receive unemployment insurance benefits because she had voluntarily quit her employment.

The claimant received the representative's decision by August 9, 2010. The claimant did not understand all the information on the determination because English is not her primary language. The claimant did not realize the representative's determination was considered final unless an appeal was filed or postmarked on or before August 14, 2010.

The claimant went to her local workforce office on August 24. At that time, a local representative explained the representative had decided she was not qualified to receive benefits and if she disagreed, she needed to appeal immediately. The claimant filed her appeal at her local Workforce office on August 24, 2010.

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).

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 August 16, 2010 deadline for appealing expired. Since August 14 was a Saturday, the deadline to appeal was automatically extended to Monday, August 16.

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 received the determination on August 9. She had a reasonable opportunity to file a timely appeal, but did not do so.

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. Even though English is not the claimant's primary language, waiting more than two weeks to have the representative's August 4 determination translated is not reasonable. If the claimant did not understand what the determination meant, it was her responsibility to have someone translate the determination right away or go to her local Workforce office right away. Based on the facts in the case, the claimant did not establish a legal excuse for filing a late appeal. 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 legal jurisdiction to make a decision on the merits of the claimant's appeal. This means that even though the parties presented testimony about the reasons for the claimant's employment separation, this issue cannot be addressed and the August 4 determination cannot be changed.

DECISION:

The representative's August 4, 2010 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 the claimant remains disqualified from receiving unemployment insurance benefits as of July 4, 2010. 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