

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AUDREANA L TURNER

Claimant

APPEAL NO: 11A-UI-05240-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA

Employer

OC: 01/10/10

Claimant: Appellant (1/R)

Iowa Code § 96.5(3)a – Refusal of Suitable Work

Iowa Code § 96.6(2) – Timeliness of Appeal

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's November 30, 2010 determination (reference 03) that held her disqualified from receiving benefits as of September 26, 2010, because she declined the employer's September 27, 2010 offer of suitable work. The claimant responded to the hearing notice, but was not available when called for the hearing. The employer did not respond to the hearing notice or participate in the hearing.

Forty minutes after the scheduled hearing, the claimant called the Appeals Section. She had not noticed until then that she had been called for a 9 a.m. scheduled hearing. The claimant requested that the hearing be reopened. Based on the claimant's request to reopen the hearing, the administrative record and the law, the administrative law judge finds the claimant did not file a timely appeal and must disqualify her from receiving benefits as of September 26, 2010.

ISSUES:

Did the claimant establish good cause to reopen the hearing?

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 10, 2010. When the claimant called in her claim for the week ending October 2, 2010, she reported that she refused the employer's September 27, 2010 offer of work. On November 30, 2010, a representative's determination was mailed to the claimant and employer indicating the claimant was not qualified to receive unemployment insurance benefits as of September 26, 2010, because she refused the employer's offer of work on September 27.

The claimant appealed this decision on April 18, 2010, after she established a new benefit year, and received a determination holding her ineligible to receive benefits based on the November 30, 2010 determination.

After a hearing notice was mailed on May 24, the claimant responded and timely contacted the Appeals Section to provide the phone number she could be contacted at to participate in the hearing. The claimant's number was called at the time of the scheduled hearing, but she did not answer her phone. The claimant did not contact the Appeals Section until 40 minutes after the scheduled hearing. She requested the hearing be reopened because she had not noticed she had been called for the hearing before 9:40 a.m.

REASONING AND CONCLUSIONS OF LAW:

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c). The claimant did not establish good cause to reopen the hearing. Therefore, her request is denied.

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). 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 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). In this case, the claimant's appeal was filed months after the December 10, 2010 deadline for appealing expired.

The administrative record does not establish that the claimant's failure to file a timely appeal was 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 late appeal, the Appeals Section does not have jurisdiction to make a decision on the merits of the appeal.

DECISION:

The claimant's request to reopen the hearing is denied. The representative's November 30, 2010 determination (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

jurisdiction to address the merits of her appeal. This means the claimant remains disqualified from receiving unemployment insurance benefits as of September 26, 2010. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. An issue of overpayment regarding benefits the claimant received since September 26, 2010, is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs