

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SYLVIA V MENDOZA
Claimant

APPEAL NO: 13A-UI-03937-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARKETLINK INC
Employer

OC: 02/17/13
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant appealed a representative's March 15, 2013 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 for reasons that do not qualify her to receive benefits. The claimant participated in the hearing. Sharon Nagle and Larry Schultz appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes that since the claimant did not file a timely appeal, the March 15 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 February 17, 2013. The claimant established this claim after a temporary job ended. The claimant did not earn \$1,840.00 or ten times her weekly benefit amount in wages from this temporary job.

The claimant did not learn about a fact finding interview with the employer until after the interview was held. Although the claimant had moved, she had the same phone number. She did not receive a call to participate in the fact-finding interview.

On March 15, 2013, a determination was mailed to the claimant and the employer. The determination informed the parties the claimant was not qualified to receive benefits because she had voluntarily quit her employment without good cause. The determination also stated that the decision became final unless an appeal was filed or postmarked on or before March 25, 2013.

The claimant received the March 15 determination by March 19, 2013. She did not understand the determination or her appeal rights. When the claimant called the Department about missing

the fact-finding interview, she was told she would receive a decision that she could appeal. The claimant did not realize the March 15 determination was the decision she could appeal.

After the claimant went to the Sioux City office, she then learned she needed to appeal the March 15 determination. The claimant filed her appeal on April 2, 2013.

REASONING AND CONCLUSIONS OF LAW:

The law states that an unemployment insurance determination is final unless a party appeals the determination within ten days after the determination 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). In this case, the claimant filed her appeal on April 2, 2013, or after the March 25, 2013 deadline for appealing expired.

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). Since the claimant received the determination before March 25, 2013, she had a reasonable opportunity to file a timely appeal.

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 the claimant may not have understood the appeal process, she did not establish a legal excuse for filing a late appeal. The Appeals Section does not have any legal authority to make a decision on the merits of the claimant's appeal.

DECISION:

The representative's March 15, 2013 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 address the merits of the claimant's appeal. This means the claimant remains disqualified from receiving benefits as of April 24, 2012. 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/tll