

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**KERI SHELTON
3829 92ND DR
URBANDALE IA 50322-2187**

**SEARS ROEBUCK & COMPANY
c/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 06A-UI-05437-RT
OC: 03-19-06 R: 02
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.6-2 – Initial Determination (Timeliness of Appeal)

STATEMENT OF THE CASE:

The claimant, Keri Shelton, filed an appeal from an unemployment insurance decision dated April 17, 2006, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on June 12, 2006, with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where she or any of her witnesses could be reached for the hearing, as instructed in the notice of appeal. Sid Bolton, Human Resources Manager, participated in the hearing for the employer, Sears Roebuck & Company. Department Exhibit One was admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, including Department Exhibit One, the administrative law judge finds: An authorized representative of Iowa Workforce Development issued a decision in this matter on April 17, 2006, reference 01, determining that the claimant was not eligible to receive unemployment insurance benefits because she voluntarily quit work on March 18, 2006. This decision was sent on the same day to the parties including the claimant at the same address as is shown on the claimant's appeal. That decision indicated that an appeal had to be postmarked or otherwise received by the Appeals Section by April 27, 2006. However, as shown at Department Exhibit One, which is the claimant's appeal, the claimant did not appeal the decision until May 22, 2006 when it appears that she left her appeal at a local Workforce Development office. The claimant's appeal would be 25 days late. In addition to the present appeal by the claimant for benefit year effective March 19, 2006, the claimant has filed for and received unemployment insurance benefits in two prior benefit years including appeals that went all the way to the Employment Appeal Board. It appears that the claimant was familiar with unemployment insurance processes. The claimant filed for unemployment insurance benefits for the most recent benefit year effective March 19, 2006. The claimant received no unemployment insurance benefits although filing weekly claims for two weeks, benefit weeks ending March 25, 2006 and April 1, 2006.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant filed a timely appeal or, if not, whether the claimant can demonstrate good cause for such failure. The administrative law judge concludes that the claimant's appeal was not timely and the claimant has not demonstrated good cause for the delay in the filing of her appeal and, as a consequence, the administrative law judge has no jurisdiction to reach the remaining issue; namely, the separation from employment.

Iowa Code section 96.6-2 provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the

claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. Gaskins v. Unempl. Comp. Bd. of Rev., 429 A.2d 138 (Pa. Comm. 1981); Johnson v. Board of Adjustment, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

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 record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. Franklin v. IDJS, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. Beardslee v. IDJS, 276 N.W.2d 373, 377 (Iowa 1979); see also In re Appeal of Elliott 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert 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).

(1) The record shows that the appellant did have a reasonable opportunity to file a timely appeal.

871 IAC 24.35(1) provides:

(1) Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

a. If transmitted via the United States postal service, on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

b. If transmitted by any means other than the United States postal service on the date it is received by the division.

871 IAC 24.35(2) provides:

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or

regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service or its successor, the division shall issue an appealable decision to the interested party.

The administrative law judge concludes that the claimant has the burden to prove that her appeal was timely or that she had good cause for delay in the filing of her appeal. The administrative law judge concludes that the claimant has failed to meet her burden of proof to demonstrate by a preponderance of the evidence either that her appeal was timely or that she had good cause for the delay in the filing of her appeal. On its face the claimant's appeal as shown at Department Exhibit One is not timely being 25 days late as set out in the Findings of Fact. The claimant did not participate in the hearing and provide reasons under oath why her appeal was late. In her appeal letter the claimant stated that on May 17, 2006, she called to find out the status of her unemployment claim and was then informed of the decision. The claimant indicates that she was not notified of that decision by mail. The claimant did not participate in the hearing to provide under oath support of those statements. Further, the decision from which the claimant seeks to appeal was mailed to the same address as is shown on the claimant's appeal. Finally, even assuming that the claimant did not receive the decision, there is no evidence as to why, if the claimant learned about the situation on May 17, 2006 that she waited until May 22, 2006 to file her appeal. The administrative law judge notes that the claimant is familiar with unemployment insurance appeals processes as shown in Iowa Workforce Development records. The administrative law judge does not understand why after filing for unemployment insurance benefits for a new benefit year effective March 19, 2006, the claimant waited almost two months to inquire about her benefits. The administrative law judge concludes that the claimant has not demonstrated good cause for delay in the filing of her appeal. Accordingly, the administrative law judge concludes that the claimant's attempted appeal of the decision dated April 17, 2006, reference 01, is not timely and the claimant has not demonstrated good cause for delay in the filing of her appeal. Therefore, the administrative law judge concludes that he lacks jurisdiction to make a determination with respect to the separation from employment. The administrative law judge further concludes that the representative's decision of April 17, 2006, reference 01, should remain in full force and effect.

DECISION:

The representative's decision of April 17, 2006, reference 01, is to remain in full force and effect. The claimant, Keri Shelton, is not entitled to receive unemployment insurance benefits, until, or unless, she requalifies for such benefits, because she left her employment voluntarily without good cause attributable to the employer. The claimant's attempted appeal is not timely and the claimant has not demonstrated good cause for its delay.

kkf/pjs