

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSHUA H BOYD
Claimant

APPEAL NO: 11A-UI-08932-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 11/21/10
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 May 10, 2011 determination (reference 01) that disqualified him from receiving benefits as of July 10, 2010, because voluntarily quit this employment for reason that do not qualify him to receive benefits. A telephone hearing was scheduled on July 29, 2011. The claimant did not respond to the hearing notice or participate in the hearing. Dale Dickman appeared on the employer's behalf. Based on the administrative record and the law, the administrative law judge concludes the claimant is not qualified to receive benefits as of July 10, 2010.

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 November 23, 2008. He established a new benefit year during the week of November 21, 2010. On May 10, 2011, a representative's determination was mailed to the claimant and employer. This determination disqualified the claimant from receiving benefits as of July 10, 2010, because he voluntary quit this employment for reasons that do not qualify him to receive benefits. The determination informed the parties that this became final unless an appeal was filed or postmarked on or before May 20, 2011.

The record does not establish when the claimant received the May 10 determination. He filed his appeal by faxing it to the Appeals Section on July 8, 2011.

REASONING AND CONCLUSIONS OF LAW:

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 after the May 20, 2011 deadline for appealing expired.

The claimant did not establish a legal excuse for filing a late appeal. Since he did not file a timely appeal and did not establish a legal excuse for filing a late appeal, the Appeals Section does not have legal jurisdiction to address the merits of his appeal.

The record establishes he earned requalifying wages during the second quarter of 2011.

DECISION:

The representative's May 20, 2011 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 his appeal. This means the claimant remains disqualified from receiving unemployment insurance benefits as of July 10, 2010. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. During the second quarter of 2011, the claimant requalified to receive benefits. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs