

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SCOTT A SLOAN

Claimant

APPEAL NO: 10A-UI-03713-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC

Employer

OC: 01/31/10

Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit
Section 96 .6- 2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed a representative's February 18, 2010 decision (reference 01) that concluded he was not qualified to receive benefits, and the employer's account was exempt from charge because he had voluntarily quit his employment for reasons that do not qualify him to receive benefits. A telephone hearing was scheduled on April 13, 2010. Neither responded to the hearing notice nor participated in the hearing. Based on the administrative record and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

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 January 31, 2010. On February 18, 2010, a representative's decision was mailed to the claimant and employer. The decision held the claimant was not qualified to receive unemployment insurance benefits as of January 31, 2010. The decision also informed the parties that the decision was final unless an appeal was filed or postmarked on or before February 28, 2010.

The claimant received the representative's decision on February 19 or 20, 2009. On March 9, 2010, the claimant filed his appeal at his local Workforce office.

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 on March 9 or after the March 1, 2010 deadline for appealing expired. Since February 28 was a Sunday, the deadline was automatically extended until Monday, March 1, 2010.

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 record indicates the claimant had a reasonable opportunity to file a timely appeal, but did not.

The claimant did not establish that his 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 has no legal jurisdiction to make a decision on the merits of the claimant's appeal.

DECISION:

The representative's February 18, 2010 decision (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 has no legal jurisdiction to address the merits of his appeal. This means the claimant remains disqualified from receiving unemployment insurance benefits as of January 31, 2010. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css