

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HEIDI M KING
Claimant

APPEAL NO: 06A-UI-08846-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 07/02/06 R: 04
Claimant: Appellant (1/R)

Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Heidi M. King (claimant) appealed a representative's August 1, 2006 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Wal-Mart Stores, Inc. (employer) would not be charged because the claimant voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 19, 2006. The claimant participated in the hearing. Evelyn Tansey, an assistant manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, 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 started working for the employer on December 13, 2005. This was the claimant's second job. The claimant worked part-time for the employer. When the claimant lost her full-time employment, she found other work that paid her more money. The claimant accepted a higher paying job as a contract employee. The claimant gave the employer her two-week notice on June 6, 2006. The claimant's last day of work was June 23, 2006.

The claimant established a claim for unemployment insurance benefits during the week of July 2, 2006. On August 1, 2006, a representative's decision was mailed to the claimant and employer. This decision held the claimant was not qualified to receive unemployment insurance benefits as of July 2, 2006.

The claimant received the representative's decision on August 8, 2006. The claimant did not understand the importance of the August 11, 2006 deadline and incorrectly assumed quitting a part-time job would not adversely affect her benefits when she had been laid off from a full-time job and then quit for another job. The claimant filed her appeal on August 29, 2006.

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 after the August 11 deadline for appealing expired.

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

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. Since 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 make a decision on the merits of the appeal. This means the claimant voluntarily quit her employment without good cause and the employer's account will not be charged.

Since the claimant worked part-time, the issues of whether the claimant worked part-time or full-time for the employer and whether her monetary eligibility should be based on wages from her other base period employer is remanded to the Claims Section. 871 IAC 24.27. The claimant may be eligible to receive benefits based on wages from her regular or full-time base period employer.

DECISION:

The representative's August 1, 2006 decision (reference 01) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. Therefore, she voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits. The employer's account will not be charged. This matter is remanded to the Claims Section to determine if the claimant voluntarily quit part-time employment and whether her monetary eligibility should be based on other base period employers.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/cs