

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRIS M BURKEY**  
Claimant

**APPEAL NO. 09A-UI-01756-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**L A LEASING INC**  
Employer

**OC: 07/06/08 R: 04  
Claimant: Appellant (1)**

Section 96.6-2 – Timeliness of Appeal  
Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated October 6, 2008, reference 02, that concluded he voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on February 24, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Colleen McGuinty participated in the hearing on behalf of the employer with a witness, Abbey Schueller. Exhibit A-1 was admitted into evidence at the hearing.

**ISSUE:**

Was the appeal in this case filed timely?

**FINDINGS OF FACT:**

An unemployment insurance decision was mailed to the claimant's last known address of record on October 6, 2008. The decision concluded the claimant had voluntarily quit employment without good cause attributable to the employer on July 28, 2008, and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by October 16, 2008.

The claimant received the decision within the ten-day period for appealing the decision. He filed a written appeal on February 6, 2009, which is after the time period for appealing had expired. The claimant delayed in filing his appeal because when he got the decision in October 2008, he was not filing for unemployment insurance benefits and did not think the decision would have any affect on him.

On January 26, 2009, the claimant received an overpayment decision mailed on January 13, 2009, which was based on the October disqualification decision. He called the Workforce Development office on January 30 and found out the disqualification could affect the benefits he had previously received. He was told that he could appeal the decision and did so on February 6, 2009.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant filed a timely appeal.

Iowa Code section 96.6-2 provides in pertinent part:

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. . . . 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.

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 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 claimant filed his appeal late because when he got the decision in October 2008, he was not filing for unemployment insurance benefits and did not think the decision would have any affect on him.. The claimant had a reasonable opportunity to file a timely appeal. He should have inquired at that time about what the affect of the decision would be.

The 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 appeal was not filed timely, there is no jurisdiction to make a decision on the merits of the appeal.

**DECISION:**

The unemployment insurance decision dated October 6, 2008, reference 02, is affirmed. The appeal in this case was not timely, and the unemployment insurance decision disqualifying the claimant from receiving benefits remains in effect.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw