

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANET K PEARSON

Claimant

APPEAL NO. 13A-UI-00113-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALL HEART STAFFING INC

Employer

OC: 07/08/12

Claimant: Appellant (1)

Section 96.4-3 - Able to and Available for Work

Section 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated December 13, 2012, reference 02, that concluded she was still employed at the same hours and wages as her original contract of hire and was not eligible for unemployment insurance benefits. A telephone hearing was held on February 5, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Joel Katcher participated in the hearing on behalf of the employer.

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 December 13, 2012. The decision concluded the claimant was still employed at the same hours and wages as her original contract of hire and was not eligible for unemployment insurance benefits. It stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by December 23, 2012.

The claimant received the decision within the ten-day period for appealing the decision. She filed a written appeal on January 2, 2013, which is after the time period for appealing had expired. The claimant delayed in filing her appeal because she wanted to talk to someone with Iowa Workforce Development to explain the decision before appealing it.

REASONING AND CONCLUSIONS OF LAW:

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

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. Iowa Code § 96.6-2.

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 her appeal late because she wanted to talk to someone with IWD before appealing it. The claimant had a reasonable opportunity to file a timely appeal.

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 December 13, 2012, 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.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs