

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LUKE D CHAPMAN**  
Claimant

**APPEAL NO: 11A-UI-15436-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BLAZIN WINGS INC**  
Employer

**OC: 02/14/10**  
**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 March 19, 2010 determination (reference 01) that disqualified the claimant from receiving benefits and held the employer's account exempt from charge. Neither party responded to the hearing notice or participated in the hearing. Based on the administrative record, and the law, the administrative law judge finds the claimant is not qualified to receive benefits as of December 15, 2009.

**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 February 14, 2010. On March, 2010, a representative's determination was mailed to the claimant and employer. The determination disqualified the claimant from receiving benefits as of December 15, 2009. The determination informed the parties an appeal had to be filed or postmarked on or before March 29, 2010.

It is not known when the claimant received the representative's determination. After the claimant received a November 21, 2011 overpayment determination that was mailed to the same address as the March 19, 2010 determination had been mailed, the claimant filed an appeal. The claimant mailed his appeal on December 2, 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 over a year after the March 29, 2010 deadline for appealing expired.

The record does not establish that the claimant's 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) excuses the delay in filing an appeal. Since the claimant did not establish a legal excuse for filing a late appeal, the Appeals Section does not have jurisdiction to make a decision on the merits of the appeal.

**DECISION:**

The representative's March 19, 2010 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 the claimant's appeal. This means the claimant is not qualified to receive unemployment insurance benefits as of December 15, 2009. 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.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css