

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PHYLLIS SMITH**  
Claimant

**APPEAL NO: 09A-UI-18146-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WESLEY RETIREMENT SERVICES INC**  
Employer

**OC: 08/24/08**  
**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 March 24, 2009 decision (reference 03) that concluded she was not qualified to receive benefits and the employer's account was not subject to charge because she had voluntarily quit her employment for reasons that do not qualify her to receive benefits. A telephone hearing was held on January 12, 2010. The claimant participated in the hearing. Debbie Hornbuckle 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 established a claim for benefits during the week of August 24, 2008. She reopened her claim the week of March 1, 2009. On March 24, 2009, 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 October 31, 2008. The decision also informed the parties the decision was final unless an appeal was postmarked or received by the Appeals Section by April 3, 2009.

The claimant does not know when she received the March 24, 2009 decision. However, the claimant received the decision several months before she filed her appeal on December 3, 2009.

**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 section 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 April 3, 2009 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 her appeal. This means the March 24, 2009 decision is not changed and the claimant remains disqualified from receiving benefits.

**DECISION:**

The representative's March 24, 2009 decision (reference 03) 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 her appeal. This means the claimant remains disqualified from receiving unemployment insurance benefits as of October 31, 2008. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs