

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RAY A BAKER
Claimant

APPEAL NO: 12A-UI-02723-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

A+ LAWN & LANDSCAPING INC
Employer

**OC: 02/13/11
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 February 24, 2012 determination (reference 03) that disqualified him from receiving benefits and held the employer's account exempt from charge because he voluntarily quit this employment for reasons that do not qualify him to receive benefits. A telephone hearing was scheduled on April 3 at 11:30 a.m. Neither party responded to the hearing notice or participated in the hearing. Based on the administrative record and the law, the administrative law judge concludes the claimant did not file a timely appeal and remains disqualified from receiving benefits as of January 18, 2012.

ISSUE:

Did the claimant file a timely appeal or establish a legal excuse for filing a late appeal?

FINDINGS OF FACT:

The claimant reopened his 2011 claim. On February 24, 2012, a representative's determination was mailed to the claimant and employer. The determination disqualified the claimant from receiving benefits as of January 18, 2012. The determination informed the parties an appeal had to be filed or before March 5, 2012. The claimant appealed the determination on March 20, 2012.

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 after the March 5, 2012 deadline for appealing expired.

The claimant did not establish that he failed to file a timely appeal because of 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 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 February 24, 2012 determination (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 does not have jurisdiction to address the merits of his appeal. This means the claimant remains disqualified from receiving unemployment insurance benefits as of January 18, 2012. 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.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css