

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MELINDA A DOWNEY**  
Claimant

**APPEAL NO. 06A-UI-11274-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FIVE STAR QUALITY CARE INC**  
Employer

**OC: 10/15/06 R: 04  
Claimant: Appellant (1)**

Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Melinda A. Downey (claimant) appealed a representative's November 8, 2006 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Five Star Quality Care, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 11, 2006. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which she could be contacted to participate in the hearing. As a result, no one represented the claimant. Bekki Hohenthauer appeared on the employer's behalf. Based on the administrative record 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 unemployment insurance benefits during the week of October 15, 2006. On November 8, 2006, 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 15, 2006. The decision also informed the parties that the decision was final unless an appeal was filed by November 18, 2006.

The claimant received the representative's decision on November 10, 2006. The claimant signed and dated her appeal letter on November 20, 2006. The claimant did not take her appeal letter to her local Workforce office until November 22, 2006. The local Workforce office then faxed the claimant's appeal letter to the Appeals Section on November 22, 2006.

**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 § 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). Appeals are considered filed on the date a claimant provides an appeal to a local Workforce office.

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 November 20 deadline for appealing expired. (Since November 18 was a Saturday, the appeal deadline was Monday, November 20, 2006.)

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 record 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. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. Therefore, the Appeals Section has no legal jurisdiction to make a decision on the merits of the appeal.

**DECISION:**

The representative's November 8, 2006 decision (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 has no jurisdiction to address the merits of her appeal. This means the claimant remains disqualified from receiving unemployment insurance benefits as of October 15, 2006. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she 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