

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISA J BRYANT
Claimant

APPEAL NO. 06A-UI-10421-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEDONA STAFFING
Employer

OC: 09/10/06 R: 03
Claimant: Appellant (1)

Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Lisa J. Bryant (claimant) appealed a representative's October 16, 2006 (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Sedona Staffing (employer) would not be charged because the claimant voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 8, 2006. The claimant participated in the hearing. Sarah Schneck, a risk management assistant, and Tom Appel, an account manager, 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 unemployment insurance benefits during the week of September 10, 2006. On October 16, 2006, a representative's decision was mailed to the claimant and employer indicating the claimant was not qualified to receive unemployment insurance benefits as of September 10, 2006. The October 16 decision also informed the parties an appeal had to be filed on or before October 26, 2006.

The claimant received the representative's decision on October 19 or 20. The claimant also received another decision that had been mailed on October 17, 2006. This new decision informed the claimant she had to file an appeal on or before October 27, 2006, if she disagreed that she had been overpaid some benefits.

After the claimant received the October 16, 2006 decision, she attempted to obtain some information regarding paperwork she had completed in early 2004. The claimant faxed her appeal for both the October 16 and 17 decisions on October 27, 2006. When the claimant reviewed her paperwork, she only noticed the October 27, 2006 deadline date.

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).

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 filed her appeal one day after the October 26, 2006 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 does not have legal jurisdiction to make a decision on the merits of the appeal. This means the October 16, 2006 decision cannot be changed and the claimant is not qualified to receive unemployment insurance benefits as of September 10, 2006.

(Testimony was obtained from the parties about the claimant's employment and employment separation.)

DECISION:

The representative's October 16, 2006 decision (reference 01) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. Therefore, the Appeals Section has no jurisdiction to address the merits of her appeal. This means the

claimant is disqualified from receiving unemployment insurance benefits as of September 10, 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.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/cs