

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRICIA R HINH
Claimant

APPEAL NO. 09A-UI-04813-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

**Original Claim: 09/28/08
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Tricia R. Hinh (claimant) appealed a representative's January 12, 2009 decision (reference 03) that concluded she was not qualified to receive benefits and the account of Wal-Mart Stores, 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 April 23, 2009. The claimant responded to the hearing notice, but she was not available for the 11:00 a.m. scheduled hearing. Denise Levesque appeared on the employer's behalf.

At 11:43 a.m., the claimant responded to the message left by the administrative law judge for her at 11:00 a.m. At 11:52 a.m., the claimant called the Appeals Section again and asked to have the 11:00 a.m. hearing rescheduled because she was not available for the hearing. When the administrative law judge talked to the claimant a short time later, she indicated she mistakenly believed the hearing had been scheduled on Friday, April 24, instead April 23, and had not been available for the 11:00 a.m. hearing. The claimant was informed the hearing would not be reopened.

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.

ISSUES:

Did the claimant establish good cause to reopen the hearing?

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 September 28, 2008. She reopened her claim during the week of December 21, 2008, or after her employment with the employer ended. On January 12, 2009, a representative's decision was mailed to the claimant

and employer. The decision disqualified the claimant from receiving benefits as of December 21, 2008, because she had been discharged for disqualifying reasons.

It is not known when the claimant received the January 12, 2009 decision. She did not appeal until she received an overpayment decision that was mailed on March 19, 2008. The claimant appealed the decisions on March 25, 2009.

The claimant was not available for the 11:00 a.m. hearing on April 23. The claimant thought the hearing was scheduled on Friday, April 24, instead of April 23. The hearing notice specifically states the hearing was to be held on Thursday, April 23.

REASONING AND CONCLUSIONS OF LAW:

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c).

The claimant's 11:52 a.m. request to have her 11:00 a.m. hearing rescheduled is not granted, because she failed to make a timely rescheduling request. The hearing had already been closed when the claimant contacted the Appeals Section at 11:52 a.m. The claimant indicated she was not available because she mistakenly believed the hearing was scheduled for Friday, April 24, not April 23. The claimant's reason for not being available for the scheduled hearing does not establish good cause to reopen the hearing. The claimant's request to reopen the hearing is denied.

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 addresses, 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's appeal was filed after the January 22, 2009 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) 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 jurisdiction to make a decision on the merits of the appeal.

DECISION:

The claimant's request to have the hearing reopened is denied. The representative's January 12, 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 jurisdiction to address the merits of her appeal. This means the claimant remains disqualified from receiving unemployment insurance benefits as of December 21, 2008. 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/kjw