

ISSUES:

Is there 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 unemployment insurance benefits during the week of August 7, 2005. On September 30, 2005, a representative's decision was mailed to the claimant and employer. This decision concluded the claimant was not qualified to receive unemployment insurance benefits as of September 4, 2005. Another decision was issued on October 3, 2005. The October decision concluded the claimant had been overpaid because the September 30 decision disqualified her from receiving unemployment insurance benefits.

When the claimant received the September 30 decision, she did not read all the information on the decision that indicated she had to file an appeal by October 10, 2005, or the decision was considered final. The claimant did not file an appeal until she received the October 3 overpayment decision. The claimant mailed her appeal on October 13, 2005.

The claimant responded to the hearing notice and contacted the Appeals Section prior to the November 1 hearing. The phone number she provided was called, but the claimant did not answer her phone on November 1. By the time the claimant noticed a message had been left on her answering machine, the hearing had been closed and the employer had been excused. The claimant made a request to reopen the hearing.

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 acknowledged she was not available when she called for the hearing because she had gone to her bathroom. The claimant did not hear the phone ring and by the time she noticed she had a message on her answering machine and called the Appeals Section, the hearing had been closed and the employer's witness had been excused. It appears that the claimant forgot about the hearing and only contacted the Appeals Section on November 1 in response to the message left on her answering machine. The claimant did not establish good cause to reopen the hearing. Therefore, the claimant's request 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 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's appeal was filed on October 13 or after the October 11, 2005 deadline for appealing expired.

The record indicates 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 address the merits of the claimant's appeal.

#### DECISION:

The claimant's request to reopen the hearing is denied. The representative's September 30, 2005 decision (reference 03) is affirmed. The claimant did not file a timely appeal, and 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 4, 2005. 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.

dlw/pjs