

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT A BRANDT
Claimant

APPEAL NO. 11A-UI-05934-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

USA STAFFING INC
Employer

OC: 02/21/10
Claimant: Appellant (1/R)

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 March 11, 2011 determination (reference 05) that disqualified him from receiving benefits and held the employer's account exempt from charge because he voluntarily quit his employment on November 12, 2010, for reasons that do not qualify him to receive benefits. The claimant participated in the hearing. The employer did not respond to the hearing notice or participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits as of November 12, 2010.

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 benefits during the week of February 21, 2010. He reopened his claim during the week of January 23, 2011. On March 11, 2011, a representative's determination was mailed to the claimant and employer. The determination held the claimant disqualified from receiving benefits as of November 12, 2010. The determination also informed the parties the determination became final unless a party filed an appeal or had an appeal letter postmarked on or before March 21, 2011.

The claimant received the representative's determination by March 15, 2011. He was busy applying for jobs, going to college, and taking care of his children. He did not notice that the determination stated he had to file an appeal by March 21, 2011 or the determination was considered final.

The claimant started working for another employer in early April 2011. After this employment ended, the claimant filed an appeal on April 28, 2011.

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 21, 2011 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 do so.

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 jurisdiction to make a decision on the merits of the appeal. This means the March 11, 2011 determination cannot be changed.

An issue of overpayment of benefits the claimant received as of January 23, 2011, will be remanded to the Claims Section to determine.

DECISION:

The representative's March 11, 2011 determination (reference 05) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. As a result, the Appeals Section has no jurisdiction to address the merits of his appeal. This means the claimant remains disqualified from receiving unemployment insurance benefits as of November 12, 2010. 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. An issue of overpayment for benefits the claimant received as of January 23, 2011, is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw