

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER L KESSELBERG
Claimant

APPEAL NO. 09A-EUCU-00545-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 05/20/07
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit
Section 96.6-2 – Timely Appeal

STATEMENT OF THE CASE:

Jennifer L. Kesselberg filed an appeal from an unemployment insurance decision dated December 9, 2009, reference 01, that disqualified her for benefits. Due notice was issued for a telephone hearing to be held January 26, 2010. Neither Ms. Kesselberg nor the employer, Wal-Mart Stores, Inc., responded to the notice. The claimant's appeal letter is included in this record as Exhibit D-1.

ISSUE:

Has the claimant filed a timely appeal?

FINDINGS OF FACT:

Having examined all matters of record, the administrative law judge finds: The decision from which Jennifer L. Kesselberg has appealed states that it would become final unless an appeal was postmarked or received by the Agency by December 19, 2009. December 19, 2009 was a Saturday. The claimant received the decision on December 17, 2009. The claimant did not file an appeal until Tuesday, December 22, 2009.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the administrative law judge has jurisdiction to rule on the merits of this case. He does not. Iowa Code section 96.6-2 gives parties ten days from the date of a fact-finding decision to file an appeal. The time for appeal is extended to the next regular workday if the final day for filing falls on a Saturday, Sunday or a legal holiday. Had the claimant faxed her appeal to the Agency on Monday, December 21, 2009, it would have been timely. As it was, she did not file until the second business day after the end of the appeal period.

Filing a timely appeal is a jurisdictional requirement. See Franklin v. Iowa Department of Job Service, 277 N.W.2d 877, 881 (Iowa 1979). In the absence of a timely appeal, the

administrative law judge has no jurisdiction to rule on the merits of a case. The evidence in this record establishes that Ms. Kesselberg's appeal was not filed within the time limit set by statute. The decision has become final.

DECISION:

The unemployment insurance decision dated December 9, 2009, reference 01, has become final and remains in effect. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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