

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SALVACION M KLINDT
Claimant

APPEAL NO: 11A-UI-09668-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 06/20/11
Claimant: Appellant (1/R)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.6(2) – Timeliness of Appeal

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's June 23, 2011 determination (reference 03) that denied her benefits as of May 15, 2011, because she had been injured and was unable to do her job. The claimant participated in the hearing. The employer notified the Appeals Section before the hearing that the employer elected not to 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 eligible to receive benefits as of May 15, 2011.

ISSUE:

Did the claimant file a timely appeal or establish a legal excuse for filing a late appeal?

FINDINGS OF FACT:

The claimant started working for the employer in July 2010. She worked in the deli department. When the claimant was lifting something at work, she injured herself. The claimant did not report this incident to her supervisor. The claimant went to a doctor in late April. Her doctor restricted her to light-duty work.

On May 3, 2011, the claimant gave the employer her light-duty work restrictions. The employer told the claimant that the employer did not have any light-duty work for her to do. The employer told her to go home and get well. Since her physician released her to do light-duty work, the claimant reopened her claim for benefits during the week of May 15, 2011.

On June 23, 2011, a representative's determination was mailed to the claimant and employer indicating the claimant was not eligible to receive benefits as of May 15, 2011, because she was injured and unable to do her regular job.

The claimant received the representative's determination sometime before July 4, 2011. The claimant faxed her appeal July 22, 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 July 5 deadline for appealing expired. (Since July 3 was a Sunday and July 4 was a federal holiday, the deadline to appeal was automatically extended to Tuesday, July 5.)

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, because she received the determination before July 4, but did not file her appeal until July 22.

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 establish a legal excuse for filing a late appeal, the Appeals Section does not have jurisdiction to make a decision on the merits of her appeal.

Even though this decision holds the claimant ineligible to receive benefits as of May 15, she can establish her eligibility to receive benefits as of May 22 or any subsequent week by presenting a doctor's statement to her local Workforce office verifying her physician has released her to work without any work restrictions or has modified her work restrictions so she is no longer limited to just light-duty work. The claimant may be able to establish her eligible to receive benefits after May 21, because each week a claimant files a claim for benefits, she must establish she is able to and available for work. Iowa Code § 96.4(3).

The record indicates the employer no longer considers the claimant an employee. Since a determination as to whether the claimant quit or was discharged for disqualifying or non-disqualifying reasons has not been issued, this issue is remanded to the Claims Section to determine. Also, if the claimant has received benefits since May 15, 2011, an issue of overpayment must also be remanded to the Claims Section to determine.

DECISION:

The representative's June 23, 2011 determination (reference 03) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. Therefore, the Appeals Section does not have jurisdiction to address the merits of her appeal. This means the claimant is not eligible to receive benefits as of May 15, 2011, because she is looking for a tailor-made job with her light-duty work restrictions. The claimant can, however, establish her eligibility to receive benefits after May 21 by providing a doctor's statement indicating when she is able to work without any work restrictions or that her work restrictions were modified so she is

not limited to light-duty work. The issues of whether the claimant quit or was discharged or has been overpaid benefits she has received since May 15, 2011, are **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw