

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAMANTHA L PAULEY
Claimant

APPEAL NO: 13A-UI-05985-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 01/13/13
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Availability for Work/Same Hours and Wages
Iowa Code § 96.6(2) – Timeliness of Appeal

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's February 21, 2013 determination (reference 03) that held her ineligible to receive benefits because she was not considered unemployed. Neither party responded to the hearing notice or participated in the hearing. Based on the administrative record and the law, the administrative law judge concludes the claimant did not file a timely appeal so the February 21 determination cannot be changed.

ISSUE:

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

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of January 13, 2013. On February 21, 2013, a determination was mailed to the claimant and the employer. The determination held the claimant was ineligible to receive benefits as of January 13, 2013, because she was not considered unemployed. The determination informed the parties an appeal had to be filed or postmarked on or before March 3, 2013.

The claimant did not appeal the February 21 determination until she received a May 8, 2013 overpayment determination. The claimant filed her appeal on May 17, 2013.

REASONING AND CONCLUSIONS OF LAW:

The law states that an unemployment insurance determination is final unless a party appeals the determination within ten days after the determination was mailed to the party's last-known address. Iowa Code § 96.6(2). The Iowa Supreme Court has ruled that appeals 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 appeal was filed after the March 4, 2013 deadline for appealing expired. Since March 3 was a Sunday, the deadline to appeal was automatically extended to Monday, March 4, 2013.

The claimant did not establish that her 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 establish a legal excuse for filing a late appeal, the Appeals Section does not have any legal authority to make a decision on the merits of the appeal. This means the February 21, 2013 determination cannot be changed.

DECISION:

The representative's February 21, 2013 determination (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 does not have jurisdiction to address the merits of the claimant's appeal. Therefore, the February 21, 2013 determination cannot be changed and the claimant remains ineligible to receive benefits as of January 13, 2013.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css