

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

SAMILA VELAGIC  
APT # 353  
1800 GRAND AVE  
WEST DES MOINES IA 50265

COURTYARD MANAGEMENT CORP  
C/O TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166 0283

Appeal Number: 06A-UI-00103-DWT  
OC: 11/13/05 R: 02  
Claimant: Appellant (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Samila Velagic (claimant) appealed a representative's December 8, 2005 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Courtyard Management Corporation (employer) would not be charged because the claimant voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 17, 2006. The claimant participated in the hearing. Zijo Suceska interpreted the hearing. Jason Nash, the general manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

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 on October 30, 2004. The claimant worked as a full-time housekeeper. The claimant usually worked the day shift.

The last 90 days of the claimant's employment, the employer scheduled the claimant to work two nights a week. Prior to scheduling the claimant at night, the employer asked the claimant and other workers if they would mind filling in at night until the employer hired a new employee. The claimant agreed to work a couple of night shifts a week. The claimant told the employer this change in her schedule actually helped her so she could take care of her grandchildren.

When the claimant worked at night, the employer asked her to walk around the parking lot three times during her shift to make sure everything was secure. The claimant was very frightened when she went outside. When the claimant was out in the dark it brought back unpleasant memories she did not want to relive or think about. The claimant told her supervisor how frightened she was when she had to go outside. When the claimant's supervisor did not change the claimant's job duties, the claimant gave the employer her two-week notice that she was quitting. The claimant's last day of work was September 8, 2005.

Nash asked the claimant why she was quitting. The claimant did not tell Nash about the personal problems she experienced after her supervisor told her she had to go outside and check out security by walking around the building at night. Instead, the claimant indicated she was quitting so she could stay home and watch her grandchildren.

The claimant established a claim for unemployment insurance benefits during the week of November 13, 2005. On December 8, 2005 a representative's decision was mailed to the claimant and employer. This decision indicated the claimant was not qualified to receive unemployment insurance benefits and the decision was final unless an appeal was filed on or before December 18, 2005.

The claimant received the representative's decision sometime before December 22, 2005. The claimant may have had the decision by December 12. The claimant assumed she would receive another notice so she could present information about the reasons for her separation because no one talked to her prior to the December 8 decision. When the claimant did not receive any more decisions or notices, a friend took the claimant to a Workforce office on December 22, 2005, at which time the claimant filed an appeal.

REASONING AND CONCLUSIONS OF LAW:

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 after the December 18, 2005 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.

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 has no jurisdiction to make a decision on the merits of the appeal.

If the claimant had filed a timely appeal, the facts establish she quit her employment for reasons that do not qualify her to receive unemployment insurance benefits. The claimant quit so she could stay home and take care of her grandchildren. While this is a compelling personal reason for quitting, this reason does not qualify the claimant to receive unemployment insurance benefits.

#### DECISION:

The representative's December 8, 2005 decision (reference 01) is affirmed. The claimant did not file a timely appeal and did not establish a legal excuse for filing a late appeal. 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 November 13, 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/kjw