

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARK A NEELANS**  
Claimant

**APPEAL NO. 11A-UI-10819-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LABOR READY MIDWEST INC**  
Employer

**OC: 12/19/10**  
**Claimant: Appellant (1)**

Section 96.5-1 - Voluntary Quit  
Section 96.6-2 - Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant, Mark Neelans, appealed an unemployment insurance decision dated January 26, 2011, reference 02, that concluded he voluntarily quit employment without good cause. A telephone hearing was held on September 12, 2011. The parties were properly notified about the hearing. Neelans participated in the hearing. Bekka Redfearn participated in the hearing on behalf of the employer. Exhibit A-1 was admitted into evidence at the hearing.

**ISSUE:**

Was the appeal in this case filed timely?

**FINDINGS OF FACT:**

An unemployment insurance decision was mailed to Mark Neelans' last-known address of record on January 26, 2011. The decision concluded he was denied benefits because he had voluntarily quit employment without good cause attributable to the employer and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by February 5, 2011. The decision also states that if the decision denied benefits and was not reversed on appeal, it could result in an overpayment that he could be required to repay.

Neelans received the decision within the ten-day period for appealing the decision. He did not file a written appeal until after he received an overpayment decision mail to him on June 10, 2011. He filed that appeal on June 16, 2011, which is after the time period for appealing had expired. Neelans delayed in filing his appeal because he was not aware that he could appeal and had return to work for the employer and did not claim unemployment insurance benefits anymore.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether Neelans filed a timely appeal.

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last-known address. Iowa Code § 96.6-2.

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, Neelans' appeal was filed after the deadline for appealing expired.

The next question is whether he 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). There is no evidence to show that Neelans did not have an opportunity to appeal the decision by February 5, 2011.

The 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 appeal was not filed timely, there is no jurisdiction to make a decision on the denial of benefits.

**DECISION:**

The unemployment insurance decision dated January 26, 2011, reference 02, is affirmed. The appeal in this case was not timely, and the unemployment insurance decision disqualifying the claimant from receiving benefits remains in effect.

---

Steven A. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

saw/css