

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BARBARA J POPL

Claimant

APPEAL NO: 12A-UI-08813-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

APAC CUSTOMER SERVICES OF IOWA

Employer

OC: 01/08/12

Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.6(2) – Timeliness of Appeal

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's February 21, 2012 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had voluntarily quit her employment for reasons that do not qualify her to receive benefits. The claimant participated in the hearing. The employer responded to the hearing notice, but was not available for the hearing. Even though a message was left for the employer to contact the Appeals Section immediately if the employer wanted to participate in the hearing, the employer did not call the Appeals Section.

On August 14, the day before the hearing, the claimant's request to postpone the hearing because her witness was unavailable was denied.

Based on the evidence, the claimant's arguments, and the law, the administrative law judge concludes the claimant did not file a timely appeal so the February 21, 2012 determination cannot be changed.

ISSUE:

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

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of January 8, 2012. A determination was mailed to the parties on February 21, 2012. The determination held the claimant disqualified from receiving benefits. Information on the determination stated the determination became final unless a party filed an appeal or an appeal was postmarked no later than March 2, 2012.

The claimant received the determination within two to three days after February 21. The claimant was still so upset with her experiences while working for the employer, she could not file her appeal until July 16, 2012. The claimant talked to other people, her minister and Legal

Services, about her unemployment insurance claim, but she did not ask anyone to help her appeal before July 16.

When the claimant left this employment she experienced panic and anxiety attacks. The claimant's panic attacks were to the extent she asserted she could not write an appeal letter. When the claimant went to Legal Services, they told her to file an appeal and then they could possibly help her.

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 2 deadline for appealing expired.

The next question is whether the claimant had a reasonable opportunity to file a timely appeal. *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 an 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. Instead, the claimant asserted she had panic attacks to the extent that she could not physically write an appeal letter. Even though she talked to her minister and Legal Services about appealing, she did not ask anyone to write an appeal letter that she could sign. Even though the claimant asserted she could not bring herself to write an appeal letter, she was capable of establishing her claim and filing weekly benefits (weeks ending January 14 through February 11). The claimant did not establish a legal excuse for filing a late appeal. Therefore, the Appeals Section does not have any legal authority to make a decision on the merits of the appeal. This means the February 21, 2012 determination cannot be changed.

(The claimant presented testimony about the reasons for her employment separation. Since her appeal is not timely, this issue cannot be addressed in this decision.)

DECISION:

The representative's February 21, 2012 determination (reference 01) is affirmed. The claimant filed a late appeal and did not establish a legal excuse for filing a late appeal. The Appeals Section does not have jurisdiction to address the merits of her appeal or the reasons for her employment separation. This means the February 21 determination cannot be changed and the claimant remains disqualified from receiving benefits as of January 8, 2012. 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.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs