

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY A LEWIS-BURKE
Claimant

APPEAL NO: 08A-UI-03314-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BISHOP DRUMM CARE CENTER
Employer

**OC: 02/24/08 R: 02
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Mary A. Lewis-Burke (claimant) appealed a representative's March 21, 2008 decision (reference 01) that concluded she was not qualified to receive benefits, and the account of Bishop Drumm Care Center (employer) would not be charged because she voluntarily quit her employment for reasons that do not qualify her to receive benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 24, 2008. The claimant participated in the hearing with her attorney, Tom Berg. Christine Brown and Terry Trepp 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 established a claim for unemployment insurance benefits during the week of February 24, 2008. On March 21, 2008, a representative's decision was mailed to the claimant and employer indicating claimant was not qualified to receive unemployment insurance benefits because she had quit on January 18, 2008 for reasons that did not qualify her to receive benefits.

The claimant received the representative's decision before the March 31, 2008 deadline to appeal. After she received the decision, she contacted her local workforce office. A representative advised her to appeal the decision. A few days later, the claimant's tax preparer also advised the claimant to file an appeal. The claimant's tax preparer recommended an attorney the claimant could contact to help her or represent her. A couple of days after the claimant's tax preparer recommended an attorney the claimant went to her local Workforce office and filed her appeal on April 3, 2008. The claimant retained her attorney after she filed her 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 section 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 March 31, 2008 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. Initially, the claimant did not know if she would appeal and then did not know any attorney she could contact to represent her. Neither of these reasons amounts to a legal excuse for filing a late appeal.

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. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. Therefore, the Appeals Section has no jurisdiction to make a decision on the merits of the appeal.

Since filing a timely appeal is a jurisdictional matter, the claimant's equity argument has no merit. Even though testimony was received from the parties concerning the reasons for the claimant's employment separation, this issue is not addressed in the decision since the Appeals Section has no legal jurisdiction to make a decision on the merits of the claimant's appeal.

DECISION:

The representative's March 21, 2008 decision (reference 01) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. The Appeals Section has no legal jurisdiction to address the merits of her appeal. This means the claimant remains

disqualified from receiving unemployment insurance benefits as of February 24, 2008. 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