

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARGARET M GRASHORN
Claimant

APPEAL NO. 10A-UI-09597-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLLAR GENERAL
Employer

OC: 04/18/10
Claimant: Appellant (1)

Section 96.4-3 – Ability to and Availability for Work
Section 96.6-2 – Timeliness of Appeal

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's June 18, 2010 determination (reference 01) that held her ineligible to receive benefits as of April 18, 2010, because she was not partially unemployed. The claimant participated in part of the November 3, 2010 telephone hearing. Juanita King appeared on the employer's behalf.

After the claimant presented some testimony about the timeliness of her appeal, she hung up the phone. The administrative law judge called the claimant again in an attempt to have her finish the hearing. The claimant did not answer her phone, but a message was left that if she wanted to continue her participation in the hearing, she needed to call the Appeals Section. The claimant did not respond to this message. When the claimant decided to hang up her phone, she did not give the employer an opportunity to ask her questions and she did not provide any information about her employment situation or the merits of her appeal. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is not eligible to receive benefits as of April 18, 2010.

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 April 18, 2010. On June 18, 2010, a representative's determination was mailed to the claimant and employer. This determination held the claimant ineligible to receive benefits as of April 18, 2010, because she could not be considered partially unemployed when she still worked the same hours and wages as she did when the employer hired her in November 2005 to work as a part-time clerk. The determination informed the parties that this was considered final unless a party filed an appeal or an appeal was postmarked on or before June 28, 2010.

The claimant received the June 18 determination the next day, June 19. The claimant did not file her appeal until July 6, when she went to her local Workforce office and completed an appeal form.

REASONING AND CONCLUSIONS OF LAW:

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's determination is mailed to the parties' last-known address, files an appeal from the determination, it is final. Benefits shall then be paid or denied in accordance with the representative's determination. 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). The claimant asserted she went to her local Workforce office on June 28 and appealed the representative's June 18, 2010 determination. The claimant testified that she did not write the date July 6 on the appeal form. Since the appeal form is dated July 6, 2010, and was faxed to the Appeals Section July 6, 2010, a preponderance of the credible evidence establishes the claimant filed her appeal on July 6, not June 28, 2010. Therefore, she filed her appeal after the June 28, 2010 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 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) excuses the delay in filing an appeal. Since the claimant did not establish that she filed a timely appeal or had a legal excuse for filing a late appeal, the Appeals Section does not have any legal jurisdiction to make a decision on the merits of her appeal.

Before the claimant hung up her phone, she asked why the hearing took so long to be scheduled. When the claimant appealed, she requested an in-person hearing. In a July 8 letter, the Appeals Section informed the claimant an in-person hearing in Creston would not be scheduled until the week of November 15. When there is an issue of timeliness, the Appeals Section schedules a phone hearing for the timeliness of appeal issue. If the appeal is not timely, the determination the claimant appealed cannot be changed and there is no need for an in-person hearing. If, on the other hand, the appeal is timely or the appealing party establishes a legal excuse for filing a late appeal, an in-person hearing may be held on the merits of the appeal or the parties may elect to present testimony during the telephone hearing that is held before an in-person hearing.

DECISION:

The representative's June 18, 2010 determination (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 ineligible to receive benefits as of April 18, 2010 because she is not partially unemployed.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw