

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CURT A ROSENER
Claimant

APPEAL NO: 10A-UI-10742-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

POLARIS INDUSTRIES MANUF LLC
Employer

OC: 06/14/09
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant appealed a representative's July 2, 2010 decision (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because the claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits. A telephone hearing was held on September 17, 2010. The claimant responded to the hearing notice, but was not available for the hearing. The claimant did not respond to the message left on his voice mail. The employer did not respond to the hearing notice or participate in the hearing. Based on the administrative record 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 reopened his claim for benefits during the week of May 23, 2010. On July 2, 2010, a representative's decision was mailed to the claimant and employer. This decision held the claimant disqualified from receiving benefits as of May 23, 2010. The decision informed the parties the decision was final unless an appeal was filed or postmarked on or before July 12, 2010.

The claimant faxed his appeal to the Appeals Section. The claimant's appeal letter is dated July 31, but the Appeals Section stamped the fax as received on August 2, 2010. The claimant did not indicate in his appeal letter when he received the July 2, 2010 decision.

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 July 12, 2010 deadline for appealing expired.

The claimant did not establish that his 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 file a timely appeal or establish a legal excuse for filing a late appeal, the Appeal Section does not have jurisdiction to make a decision on the merits of the appeal.

DECISION:

The representative's July 2, 2010 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 jurisdiction to address the merits of his appeal. This means the claimant remains disqualified from receiving unemployment insurance benefits as of May 23, 2010. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. An issue of overpayment is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css