

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUAN F MORALES
Claimant

APPEAL NO. 07A-UI-00165-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMP ASSOCIATES - MARSHALLTOWN
Employer

**OC: 11/12/06 R: 02
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated December 15, 2006, reference 02, that concluded he voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on January 23, 2007. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Judy Rebik participated in the hearing on behalf of the employer and agreed that a decision could be made based on the information in the administrative file.

ISSUE:

Was the appeal in this case filed timely?

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The employer is a staffing service that provides workers to client businesses on a temporary or indefinite basis. When the claimant was hired, he signed a statement that he would be considered to have voluntarily quit employment if he did not contact the employer within three working days after the completion of a job assignment and request a new assignment. The claimant worked for the employer from June 21, 2006, to November 15, 2006. After his last assignment ended, the claimant failed to contact the employer about a new assignment.

An unemployment insurance decision was mailed to the claimant's last-known address of record on December 15, 2006. The decision concluded he voluntarily quit employment without good cause attributable to the employer by not contacting the employer within three days after his assignment ended and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by December 26, 2006.

The claimant received the decision within the ten-day period for appealing the decision. He filed a written appeal on January 3, 2007, which is after the time period for appealing had expired. The reason the claimant delayed in filing his appeal is unknown.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

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 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). Although the claimant asserted in his appeal letter that he had not received the decision, since he did not participate in the hearing there is no credible evidence to support this allegation.

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 merits of the appeal.

In the alternative, if the appeal would be deemed timely, the claimant would be disqualified under Iowa Code section 96.5-1-j, which provides that individuals employed by a temporary agency must contact their employer within three working days after the completion of a work assignment and seek a new assignment or they will be considered to have voluntarily quit employment without good cause attributable to the employer, provided that the employer has given them a statement to read and sign that advises them of these requirements. He did not contact the employer after his assignment ended to seek a new assignment.

DECISION:

The unemployment insurance decision dated December 15, 2006, 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. Alternatively, the claimant would be disqualified under Iowa Code section 96.5-1-j.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw