

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA L PELL
Claimant

APPEAL NO: 10A-UI-04698-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DM SERVICES INC
Employer

OC: 01/31/10
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 March 8, 2010 decision (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because the claimant voluntarily quit her employment for reasons that do not qualify her to receive benefits. A telephone hearing was held on May 7, 2010. The claimant participated in the hearing. Dana Fritsche, the human resource administrator, and Marcie Schmitt 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.

ISSUES:

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

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits, or did the employer discharge her for work-connected misconduct?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of January 31, 2010. On March 8, 2010, a representative's decision was mailed to the claimant and employer indicating the claimant was not qualified to receive unemployment insurance benefits as of January 31, 2010. The decision also stated the decision was final unless an appeal was postmarked by March 18, 2010, or received by the Appeals Section by March 18, 2010.

The claimant was out-of-town for about a week in March. When the claimant returned to her home on March 18, she learned she had received a letter from the Department on March 13, 2010. The letter the claimant received was the representative's March 8, 2010 decision. She opened the March 8 decision around noon on March 18.

The claimant did not mail her appeal on March 18 because the Appeals Section would not receive it until March 20, 2010. The claimant's boyfriend's mother encouraged the claimant to

appeal. The claimant decided she needed to file her appeal at her local Workforce office. She did not have a ride to her local Workforce office until March 26, 2010. The claimant filed her appeal on March 26 at her local Workforce office.

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 18, 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). Even though the claimant was out-of-town when the March 8 decision arrived at her residence, she read the decision on March 18. She could have mailed an appeal letter that day in time for her letter to be postmarked. The claimant asserted that if she had mailed her appeal letter on March 18, the Appeals Section would not have received it until March 20 or 22. But, the claimant did not go to her local Workforce office until March 26 to file her 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. Since the claimant did not establish a legal excuse for filing a late appeal, the Appeals Section does not have legal jurisdiction to make a decision on the merits of the appeal.

(Even though the parties presented information about the reasons for the claimant's employment separation, this decision has not addressed this issue because the claimant did not file a timely appeal.)

DECISION:

The representative's March 8, 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

does not have legal jurisdiction to address the merits of her appeal. This means the claimant remains disqualified from receiving unemployment insurance benefits as of January 31, 2010. 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