

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RYAN D ALDRIDGE
Claimant

APPEAL NO: 09A-UI-08367-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TM1 STOP LLC
Employer

OC: 04/19/09
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

TM1 Stop LLC (employer) appealed a representative's May 13, 2009 decision (reference 01) that concluded Ryan D. Aldridge (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant voluntarily quit his employment for reasons that qualified him to receive benefits. After hearing notices were mailed to the parties' last-known address of record, a telephone hearing was held on June 26, 2009. The claimant participated in the hearing. Heather Hoyt, the director, and David Barwig 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 employer 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 19, 2009. On May 13, 2009 a representative's decision was mailed to the claimant and employer that held the claimant qualified to receive unemployment insurance benefits as of April 19, 2009. The decision informed the parties an appeal had to be filed on or before May 23, 2009.

The employer received the representative's decision on May 20, 2009. The employer did not notice the deadline in which to file an appeal. Instead, since the claimant had not worked in Hoyt's division, she had to find out the details of his employment separation. Hoyt did not read all the information on the decision that indicated she had to file an appeal by May 23, 2009. On June 10, 2009, the employer filed its appeal from the May 13, 2009 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 employer's appeal was filed after the May 23 deadline for appealing expired. (The employer actually had until May 26, 2009, to file a timely appeal, because May 23 was a Saturday and May 25 was Memorial Day.)

The next question is whether the employer 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 employer had a reasonable opportunity to file a timely appeal, but did not. The employer acknowledged an appeal could have been timely filed if the employer had noticed the deadline date.

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

DECISION:

The representative's May 13, 2009 decision (reference 01) is affirmed. The employer 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 the employer's appeal. This means the claimant remains qualified to receive unemployment insurance benefits as of April 19, 2009. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css