

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KANDY L LEWIS
Claimant

APPEAL NO. 10A-UI-03516-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MANPOWER TEMPORARY SERVICES
Employer

**Original Claim: 01/10/10
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed a representative's February 17, 2010 decision (reference 01) that held her disqualified from receiving benefits, and the employer's account exempt from charge because she had been discharged for disqualifying reasons. A telephone hearing was held on April 6, 2010. The claimant responded to the hearing notice and provided her phone number. The claimant was called for the hearing, but was not available for the hearing. The claimant did not contact the Appeals Section again to participate in the hearing. Gayle Gonyaw appeared on the employer's behalf. 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 established a claim for benefits during the week of January 10, 2010. On February 17, 2010, a representative's decision was mailed to the claimant and employer. The decision disqualified the claimant from receiving unemployment insurance benefits. The decision also informed the parties the decision was final unless an appeal was filed or postmarked on or before February 27, 2010.

The claimant received the representative's decision on February 18, or 19, 2010. On March 5, 2010, the claimant went to her local Workforce office and filed her appeal.

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 March 1, 2010 deadline for appealing expired. Since February 27 was a Saturday, the deadline to appeal was automatically extended to Monday, March 1, 2010.

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 record establishes the claimant had a reasonable opportunity to file a timely appeal, but did not.

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 her appeal late on March 5, 2010, the Appeals Section has no legal jurisdiction to make a decision on the merits of her appeal. Therefore, the decision holding the claimant disqualified from receiving benefits is not changed.

DECISION:

The representative's February 17, 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 legal jurisdiction to address the merits of her appeal. This means the claimant remains disqualified from receiving unemployment insurance benefits as of January 10, 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/kjw