

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRACY P VAN KEUREN
Claimant

APPEAL NO: 08A-UI-00795-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OMFC SERVICE COMPANY
Employer

**OC: 12/02/07 R: 04
Claimant: Appellant (1)**

Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Tracy P. Van Keuren (claimant) appealed a representative's January 10, 2008 decision (reference 03) that concluded she was not eligible to receive unemployment insurance benefits because she had requested and OMFC Service Company (employer) granted her a leave of absence. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 6, 2008. Neither party participated 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 established a second benefit year during the week of December 2, 2007. On January 10, 2008 a representative's decision was mailed to the claimant and employer indicating the claimant was not eligible to receive benefits because she had requested and been granted a leave of absence.

The record does not establish when the claimant received the representative's January 10 decision. On January 24, 2008, the claimant appealed the January 10, 2008 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 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 January 22, 2008 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). The evidence does not establish when the claimant received the January 10, 2008 decision and what steps if any she took to make sure she filed a timely 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 appeal was not filed timely and the record does not establish a legal excuse for filing a late appeal, the Appeals Section has no legal jurisdiction to make a decision on the merits of the appeal.

DECISION:

The representative's January 10, 2008 decision (reference 03) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a timely appeal. The Appeals Section has no jurisdiction to address the merits of the claimant's appeal. This means the claimant is not eligible to receive unemployment insurance benefits as of December 2, 2007. This disqualification continues until she reopens her claim and establishes that she is no longer on a leave of absence and is able to and available for work.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs