

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RAY D MEYER**  
Claimant

**APPEAL NO: 12A-UI-09352-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TPI IOWA LLC**  
Employer

**OC: 06/24/12**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge  
Iowa Code § 96.6(2) – Timeliness of Appeal

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's July 16, 2012 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing. Terri Rock, the human resource manager, appeared on the employer's behalf. Based on the evidence, the parties' arguments, and the law, the administrative law judge concludes the July 16 determination that disqualified the claimant cannot be charged because the claimant did not file a timely appeal or establish a legal excuse for filing a late appeal.

**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 June 24, 2012. On July 16, 2012, a determination was mailed to the parties that disqualified the claimant from receiving benefits as of June 11, 2012. The determination informed the parties the determination was final unless an appeal was filed or postmarked on or before July 26, 2012.

The claimant does not remember when he received the determination. He may have received it by July 18. He mailed it from his residence on July 19, 20, 26 or 27. The envelope that his appeal was in was postmarked Des Moines on August 2.

**REASONING AND CONCLUSIONS OF LAW:**

The law states that an unemployment insurance determination is final unless a party appeals the determination within ten days after the determination was mailed to the party's last known address. Iowa Code § 96.6(2). The Iowa Supreme Court has ruled that appeals 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 appeal envelope was postmarked on August 2 or after the July 26 deadline for appealing expired.

The next question is whether claimant had a reasonable opportunity to file a timely appeal. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The evidence indicates the claimant had a reasonable opportunity to file a timely appeal.

A postmark presumes a party mailed a letter on a specific date. The claimant did not mail his appeal at his local post office. Even though the claimant mailed his appeal letter from his residence, it is difficult to accept that it took more than ten days to be postmarked on August 2 if the claimant mailed his appeal on July 19 or 21. It is logical that an envelope postmarked August 2 was not mailed until July 26 or 27. Since the claimant did not establish the date he actually mailed his appeal, he did not overcome the legal presumption that his appeal was mailed on August 2. The claimant did not establish a legal excuse for filing a late appeal on August 2, 2012. 871 IAC 24.35(2). Therefore, the Appeals Section does not have legal jurisdiction to address the merits of his appeal. This means the July 16 determination cannot be changed and the claimant remains disqualified from receiving benefits. ,

(The parties presented testimony concerning the reasons for the claimant's employment separation. Since the claimant did not file a timely appeal, the separation issue is not addressed in this decision.)

**DECISION:**

The representative's July 16, 2012 determination (reference 01) is affirmed. The claimant did not establish that he filed a timely appeal or that he had a legal excuse for filing a late appeal. Therefore, the Appeals Section does not have jurisdiction to address the merits of the claimant's appeal. This means the claimant remains disqualified from receiving benefits. The claimant is disqualified from receiving unemployment insurance benefits as of June 24, 2012. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw