

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WILLIAM W BROWNING**  
Claimant

**APPEAL NO: 11A-UI-11649-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEST LIBERTY FOODS LLC**  
Employer

**OC: 07/24/11**  
**Claimant: Respondent (1)**

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

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's August 22, 2011 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the employer discharged the claimant for nondisqualifying reasons. The claimant participated in the hearing. Alejandra Rojas appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the employer did not file a timely appeal so the claimant remains qualified to receive benefits.

**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 July 24, 2011. On August 2, 2011, a representative's determination was mailed to the claimant and employer. The determination held the claimant qualified to receive unemployment insurance benefits as of July 24, 2011. The determination informed the parties an appeal had to be filed or postmarked on or before September 1, 2011.

The employer received the representative's determination on August 24, 2011. A clerical employee made a mistake and the employer did not fax an appeal until September 5, 2011.

**REASONING AND CONCLUSIONS OF LAW:**

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's determination is mailed to the parties' last-known address, files an appeal from the determination; it is final. Benefits shall then be paid or denied in accordance with the representative's determination. 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). An unemployment benefits contested case is commenced

with the filing, by mail, facsimile or in person, a written appeal. Iowa Code § 17A-12(9), 871 IAC 26.4(1).

The Iowa Supreme Court has ruled that appeals from unemployment insurance determinations must be filed within the time limit set by statute and the administrative law judge has no authority to review a determination 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 September 1, 2011 deadline for appealing expired.

The next question is whether the employer 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 establishes the employer had a reasonable opportunity to file a timely appeal, but did not because an employee made a mistake about the deadline that the appeal had to be filed.

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 establish a legal excuse for filing a late appeal, the Appeals Section does not have jurisdiction to make a decision on the merits of the appeal.

**DECISION:**

The representative's August 22, 2011 determination (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 does not have jurisdiction to address the merits of the employer's appeal. This means the claimant remains qualified to receive unemployment insurance benefits as of July 24, 2011, provided he meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs