

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NICHOLAS L KELLY**  
Claimant

**APPEAL NO: 12A-UI-10417-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JELD-WEN INC**  
Employer

**OC: 07/01/12**  
**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 25, 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 responded to the hearing notice, but did not answer his phone when he was called for the hearing. A message was left for the claimant to contact the Appeals Section immediately if he wanted to participate in the hearing. Susan Chemelousky, a TALX representative, appeared on the employer's behalf. Brad Harris and Nicole Smith were available to testify on the claimant's behalf.

About an hour after the scheduled hearing, the claimant responded to the message and called the Appeals Section. He requested that the hearing be reopened. Based on the claimant's request to reopen the hearing, the administrative record, and the law, the administrative law judge must deny the claimant's request to reopen the hearing and concludes the claimant did not file a timely appeal or establish a legal excuse for filing a late appeal.

**ISSUES:**

Did the claimant establish good cause to reopen the hearing?

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 July 1, 2012. On July 25, 2012, a determination was mailed to the claimant and the employer. The determination held the claimant disqualified from receiving benefits as of June 25. The determination informed the parties an appeal had to be filed or postmarked on or before August 4, 2012, unless this day was a Saturday or Sunday, and then the deadline to appeal would be Monday. The claimant received the determination within a couple of days of it being mailed. The claimant went to his local Workforce office on August 24 and filed his appeal.

The claimant received the hearing notice and properly responded to it by contacting the Appeals Section before the September 26 hearing. He provided the phone number to contact him for the hearing. The claimant works a night shift and noted in his cell phone that his hearing was scheduled on September 26 at 10:30 a.m. A few days before September 26, the claimant's cell phone got wet and he had to replace it. The claimant was unable to retrieve information he had previously inputted in his cell phone.

On September 26, the claimant forgot about the scheduled hearing. He heard his phone ring, but the number displayed was a blocked or private call. The claimant does not answer these calls. Later when the claimant got up, he noticed he had a voice mail message. After listening to the administrative law judge's message, he called the Appeals Section and asked that the hearing be reopened.

#### **REASONING AND CONCLUSIONS OF LAW:**

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c). The facts indicate the claimant forgot about the scheduled September 26 hearing because he had to replace his cell phone and did not remember to add a reminder to his new phone that he had hearing on September 26. If the claimant had remembered he had a hearing, it is presumed he would have picked up a blocked or private number when he was called for the 10:30 a.m. hearing. Since the claimant forgot about the hearing, he did not establish good cause to reopen the hearing. His request to reopen the hearing is denied.

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision 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 was filed after the August 6, 2012 deadline for appealing expired. Since August 4 was a Saturday, the deadline to appeal is automatically extended to August 6, 2012.

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 claimant had time to file a timely appeal, but did not do so.

The record does not establish that the claimant's failure to file a timely appeal was 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), which would excuse the delay in filing an appeal. Since the claimant did not establish a legal excuse for filing a late appeal, the Appeals Section does not have any legal authority to make a decision on the merits of his appeal. This means the July 25, 2012 determination cannot be changed.

**DECISION:**

The claimant's request to reopen the hearing is denied. The representative's July 25, 2012 determination (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 does not have jurisdiction to address the merits of the claimant's appeal. This means the claimant remains disqualified from receiving benefits as of June 25, 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