

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA GEVESHAUSEN
Claimant

APPEAL NO: 10A-UI-16628-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NEGRON'S MEXICAN FOOD
Employer

OC: 09/12/10
Claimant: Respondent (1)

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

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's November 12, 2010 determination (reference 02) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant's employment separation was for nondisqualifying reasons. The claimant did not respond to the hearing notice or participate in the hearing. Cassandra Nelson and Gerarda Negron appeared on the employer's behalf. Ike Rocha was available to testify. Based on the evidence, the arguments of the employer, and the law, the administrative law judge finds 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 September 12, 2010. On November 12, 2010, a representative's determination was mailed to the claimant and employer indicating that based on the reasons for her employment separation, the claimant was qualified to receive unemployment insurance benefits as of September 12, 2010. The determination stated an appeal had to be filed or postmarked no later than November 22, 2010.

Negron received the representative's determination on November 22, 2010. She did not know if she could appeal the decision she had just received. Negron wanted Nelson's advice and talked to her the week of November 29. During this week, the employer called Workforce to find out if the employer could appeal the determination. The employer filed an appeal on December 6, 2010.

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).

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 November 22 deadline for appealing expired.

The next question is whether the employer 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 establishes the employer took an unreasonable amount of time to file an appeal. The employer received the determination on November 22 and did not file the appeal until December 6. It took the employer 14 days to file an appeal after receiving the appeal. The law gives a party ten days to file a timely appeal.

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 file a timely appeal or 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. This means the reasons for the claimant's employment separation cannot be reviewed.

DECISION:

The representative's November 12, 2010 determination (reference 02) is affirmed. The employer did not file a timely appeal or establish a legal excuse for filing a late appeal. The Appeals Section has no jurisdiction to address the merits of the employer's appeal. This means that based on this employment separation, the claimant remains qualified to receive unemployment insurance benefits as of September 12, 2010. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css