

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DWYANE LEWIS
Claimant

APPEAL NO: 13A-UI-09040-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC
Employer

OC: 03/24/13
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.6(2) – Timeliness of Appeal

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's April 19, 2013 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had voluntarily quit for reasons that do not qualify him to receive benefits. The claimant participated in the hearing. Sandy Matt appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant did not file a timely appeal which means the April 19, 2013 determination cannot be changed and the claimant remains disqualified from receiving benefits.

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 March 24, 2013. An April 19, 2013 determination was mailed to the claimant and the employer. The determination held the claimant was not qualified to receive benefits because he had voluntarily quit his employment for reasons that do not qualify him to receive benefits. The determination informed the parties that it was final unless an appeal was filed or postmarked on or before April 29, 2013. The claimant received the determination in April.

In early August the claimant went to a Workforce office in New Jersey. A New Jersey representative advised the claimant to appeal the determination. The claimant filed his appeal on August 6, 2013.

REASONING AND CONCLUSIONS OF LAW:

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 April 29, 2013 deadline for appealing expired.

The next question is whether the 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'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. 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 the appeal. This means the April 19, 2013 determination cannot be changed and the claimant remains disqualified from receiving benefits.

DECISION:

The representative's April 19, 2013 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 until he earns ten times his weekly benefit amount. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css