

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DENG M DAVIDSON**  
Claimant

**APPEAL NO. 08A-UI-10927-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT & COMPANY**  
Employer

**OC: 09/07/08 R: 02**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Deng M. Davidson (claimant) appealed a representative's October 27, 2008 decision (reference 01) that concluded he was not qualified to receive benefits, and the account of Swift & Company (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 8, 2008. The claimant participated in the hearing. Tony Luse, the employment manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Did the claimant file a timely appeal or establish a legal excuse for filing a late appeal?

Did the employer discharge the claimant for work-connected misconduct?

**FINDINGS OF FACT:**

The employer hired the claimant for the third time on May 5, 2008. The employer hired the claimant to work as a full-time employee. The claimant understood he was a probationary employee the first 75 days of this new employment. During an employee's probation, the employer does not want employees to miss any work, but allows the employee two absences. If an employee satisfactorily completes the probation, the employer allows employees to accumulate ten attendance points. During his most recent probation, the claimant missed work on June 2, 3, 30 and July 2, 2008. On July 8, the employer extended the claimant's probation for an additional 60 days because he missed four days of work in June and July. The claimant did not understand that the employer extended his probation.

The employer gave the claimant permission to be absent from work on August 18. On Saturday, September 6, the claimant was scheduled to work. The claimant notified the employer he was unable to work because his finger was swollen. The claimant used a hook at

work to pull meat. The claimant believed the constant use of the hook caused his finger and hand to become swollen.

The employer's records indicate the claimant notified the employer on Monday, September 8, that he was unable to work because his hand was swollen. The claimant reported to work either on September 8 or 9. When the claimant reported to work, he talked to Aaron Vawter and told him about his swollen hand. Vawter took the claimant to the employer's nurse, who had the claimant put ice on his hand. On September 9, the employer discharged the claimant because he had too many absences during his probation. The claimant's probation, 135 days, did not end until September 20, 2008.

The claimant established a claim for benefits during the week of September 7, 2008. On October 27, 2008, a representative's decision was mailed to the claimant and employer. The decision indicated the claimant was not qualified to receive unemployment insurance benefits as of September 7, 2008. The decision also informed the parties the decision was considered final unless an appeal was filed on or before November 6, 2008.

The claimant does not know when he received the decision. The claimant does not fully understand printed English. The claimant has his uncle read and explain paperwork he receives. The claimant's uncle lives in Des Moines. The claimant was unable to get to Des Moines before he talked to a local Workforce representative on November 19. The claimant does not have a vehicle for transportation. On November 19, 2008, the claimant walked to his local Workforce office to ask someone to tell him and explain to him what the October 27 decision said and meant. It took the claimant about two hours to walk to the local Workforce office from his residence. After a local representative told the claimant he had been disqualified and he was supposed to have appealed the decision by November 6, the claimant filed his appeal that same day, November 19, 2008.

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

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's decision is mailed to the parties' last-known address, files an appeal from the decision, the decision is final. Benefits shall then be paid or denied in accordance with the representative's decision. 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 decisions 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 claimant's appeal was filed after the November 6, 2008 deadline for appealing expired.

The next question is whether the claimant 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 does not establish when the claimant received the October 27 decision. If the claimant received the decision before November 6, he did not understand what the decision said or meant until November 19, 2008.

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. Instead, the claimant's failure to file a timely appeal

occurred because he did not take reasonable and timely steps to find out what the October 27 decision meant and what he had to do if he did not agree with the decision. Since the claimant's failure to file a timely appeal was not due to Agency or a delay by the United States Postal Service, the Appeals Section does not have legal jurisdiction to make a decision on the merits of the claimant's appeal. This means the October 27 decision holding the claimant not qualified to receive benefits as of September 7, 2008, cannot be changed.

**DECISION:**

The representative's October 27, 2008 decision (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 has no jurisdiction to address the merits of his appeal. This means the claimant remains disqualified from receiving unemployment insurance benefits as of September 7, 2008. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw