

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL D ABBOTT
Claimant

APPEAL NO: 12A-UI-02740-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EMCO ENTERPRISES INC
Employer

OC: 01/08/12
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 February 15, 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 and the employer's account exempt from charge because the claimant had been discharged for disqualifying reasons. The claimant participated in the hearing. The employer did not respond to the hearing notice or participate in the hearing. Based on the evidence, the claimant's arguments and the law, the administrative law judge finds the claimant did not file a timely appeal which means the February 15, 2012 determination cannot be changed.

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 January 8, 2012. On February 15, 2012, a representative's determination was mailed to the claimant and employer. The determination stated the claimant was not qualified to receive unemployment insurance benefits. The determination also informed the parties that an appeal had to be filed or postmarked on or before February 25, 2012.

The claimant received the determination at least a week before he filed his appeal. He did not think about mailing an appeal letter. He procrastinated and did not go to his local Workforce office until March 7, 2012. He filed his appeal at his local Workforce office on March 7.

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 claimant's appeal was filed after the February 27, 2012 deadline for appealing expired. Since February 25 was a Saturday, the deadline to appeal was automatically extended to Monday, February 27.

The claimant did know when he received the February 15 determination. He admitted he had the determination at least a week before he filed his appeal. Even if the claimant received the determination late, he failed to take timely and reasonable steps to file his appeal. His failure to file his appeal before March 7 was a result of his procrastination, not an Agency error or misinformation, 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. Therefore, the Appeals Section does not have jurisdiction to make a decision on the merits of the appeal.

The claimant testified about the reasons for his employment separation. Since the Appeals Section does not have jurisdiction in this matter, the reasons for the claimant's employment separation are not addressed in this decision.

DECISION:

The representative's February 15, 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 his appeal. This means the claimant remains disqualified from receiving unemployment insurance benefits as of January 8, 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.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css