

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHELLE J COOK**  
Claimant

**APPEAL NO: 14A-UI-01153-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 12/29/13**  
**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 January 16, 2014 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated at the February 20 hearing. Julie Duran, the personnel coordinator, and Danielle Hoppes-Wood 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 is not qualified to receive benefits.

**ISSUE:**

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

**FINDINGS OF FACT:**

The claimant's employment ended on December 26, 2013. She established a claim for benefits during the week of December 29, 2013. A January 16, 2014 determination was mailed to the claimant at her former address. The claimant moved to her current address about the same time the January 16 determination was mailed to her. The January 16 determination held the claimant disqualified from receiving benefits and informed the parties an appeal had to be filed or postmarked on or before January 26, 2013.

The claimant received the determination shortly after it was mailed or about two weeks before she filed her appeal. The claimant did not file her appeal until January 30 because she did not understand the process to appeal if she did not agree with the decision. The claimant did not contact her local Workforce office to have her questions answered.

**REASONING AND CONCLUSIONS OF LAW:**

The law states that an unemployment insurance determination is final unless a party appeals the determination within ten days after the determination 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 January 27 deadline for appealing expired. (Since January 26 was a Sunday, the deadline was automatically extended to Monday, January 27, 2013.)

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). Based on the claimant's testimony, she had a reasonable opportunity to file a timely appeal, but did not.

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. Since the claimant did not establish a legal excuse for filing a late appeal, the Appeals Bureau does not have any legal authority to make a decision on the merits of the claimant's appeal. This means the January 16, 2014 determination cannot be changed and the claimant remains disqualified from receiving benefits.

(The parties presented testimony at the hearing concerning the reasons for the claimant's separation.)

**DECISION:**

The representative's January 16, 2014 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 Bureau does not have any legal authority to address the merits of the claimant's appeal. This means the January 16, 2014 determination cannot be changed. The claimant remains disqualified from receiving unemployment insurance benefits as of December 29, 2013. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she 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/pjs