

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NICK E CHAPLIN**

Claimant

**APPEAL NO: 11A-UI-15557-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT PORK COMPANY**

Employer

**OC: 10/30/11**

**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 November 21, 2011 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. The claimant participated in the hearing. Aureliano Diaz, the human resource director, 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.

**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 reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in October 2005. His employment ended on October 21, 2011. He established a claim for benefits during the week of October 30, 2011.

On November 21, 2011, a representative's determination was mailed to the claimant and employer. The determination disqualified the claimant from receiving benefits as of October 30, 2011. The determination also informed the parties an appeal had to be filed or postmarked no later than December 1, 2011.

The claimant went out of town before he received the November 21 determination. He returned to his home on November 30, 2011. He opened his mail and knew about the disqualifying determination on December 1. He did not read the determination carefully and did not notice he had to file an appeal on or before December 1. He assumed he had more time to file an appeal.

A day or so later, the claimant carefully read the determination and realized he missed the December 1 deadline. He went to his local Workforce office on December 6 to ask what he

could do. He was advised to file his appeal so the Appeals Section could decide to accept or reject his appeal. The claimant filed his appeal on December 6, 2011.

#### **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 December 1, 2011 deadline for appealing expired. The claimant filed a late appeal.

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 went out of town and did not read the determination until December 1. When he initially read the determination, he did not notice the December 1 deadline. Since the claimant could have filed his appeal on December 1 and did not establish a legal excuse for filing a late appeal, the Appeals Section does not have jurisdiction to make a decision on the merits of his appeal. This means that even though the parties presented testimony about the reasons for the claimant's discharge, the Appeals Section does not have any authority to change the determination. Therefore, the claimant is not qualified to receive benefits as of October 30, 2011.

#### **DECISION:**

The representative's November 21, 2011 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 October 30, 2011. 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/pjs