

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PATRICK E BROWN**  
Claimant

**APPEAL NO: 11A-UI-05054-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RUAN TRANSPORT CORP**  
Employer

**OC: 01/02/11  
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 March 4, 2011 determination (reference 02) 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. Randy Dutoit, the logistics manager, appeared on the employer's behalf. During the hearing Employer Exhibits One and Two were offered and admitted as evidence. 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 late appeal?

Did the employer discharge him for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in August 2004. The employer discharged the claimant on December 9, 2010. The claimant established a claim for benefits during the week of January 2, 2011. On March 4, 2011, a representative's determination was mailed to the claimant and employer stating the claimant was not qualified to receive unemployment insurance benefits as of January 2, 2011. The determination also informed the parties that this was the final decision unless a party filed an appeal or an appeal was postmarked on or before March 14, 2011.

The claimant finally went to his local Workforce office on April 15 and faxed in his appeal. The claimant indicated on his appeal that he had tried to file his appeal several times, but learned the Appeals Section had not received these appeals. The Appeal Section received the appeal the claimant sent on April 15, that same day.

The claimant did not present information about the day he received the March 4 determination.

## **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 March 14, 2011 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 claimant did not answer the question as to what day he received the March 4 determination. He asserted after he received the determination, he faxed his appeal by e-Fax within two days. The day after the claimant allegedly faxed his appeal, he testified that he contacted the Appeals Section to find out if the Appeals Section received his appeal. The claimant then asserted he faxed his appeal several times by e-Fax from his computer before he finally went to his local Workforce office on April 15, over a month later to fax his appeal. Even though the claimant sent the e-Fax through his home computer, he alleged he did not have a record of when he first faxed the appeal letter.

Since timeliness is jurisdictional, deadlines must be strictly enforced. The claimant's evasive answers as to what date he first faxed his appeal or received the determination are factors that must be considered when deciding his credibility. When the claimant did not go to his local Workforce office to file his appeal a month after the deadline passes indicates he did not take reasonable steps to file his appeal. Since the claimant testified he used his commuter to send his initial appeal, his failure to provide the date he did this does not help his credibility. Based on the claimant's evasive testimony about the date(s) he faxed his appeal and then his failure to go to his workforce office for over a month indicate the claimant did not file a timely appeal and did not establish a legal excuse for filing a late appeal. As a result, the Appeals Section does not have jurisdiction to address the merits of his appeal.

Even though the parties presented testimony concerning the reasons for the claimant's employment separation, this issue cannot be addressed when the claimant did not file a timely appeal. Therefore, the March 4, 2011 determination cannot be changed.

## **DECISION:**

The representative's March 4, 2011 determination (reference 02) 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 2, 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.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs