

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SARA R MONTOYA
Claimant

APPEAL NO: 12A-UI-10844-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VAN DIEST SUPPLY CO
Employer

OC: 07/29/12
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 August 17, 2012 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 in the hearing. Jeff Krausman, Attorney at Law, represented the employer. Lon Neese, Lee Trask, Clark Vold and Carolyn Cross appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant did not file a timely appeal. This means the Appeals Section does not have jurisdiction to consider the reasons for her employment separation and she remains disqualified from receiving benefits.

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 July 29, 2012. A fact-finding interview was conducted the morning of August 16. The claims specialist informed the parties a written determination would be made within a couple of days. On August 17, 2012, a determination was mailed to both parties. The determination disqualified the claimant from receiving benefits because she had been discharged for disqualifying reasons.

On August 17, the claimant drove to Texas for personal reasons. She returned to her home by August 24. On August 24 she read the determination that disqualified her from receiving benefits. The determination also informed the parties that this was the final decision unless an appeal was postmarked or filed on or before August 27, 2012. When the claimant returned home on August 24, she was preoccupied with personal issues such as getting her children ready for school. The claimant went to her local Workforce office on September 7 and filed her appeal.

REASONING AND CONCLUSIONS OF LAW:

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision 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 August 27, 2012 deadline for appealing expired.

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). The claimant had a reasonable opportunity to file a timely appeal, but did not. She filed her appeal late.

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. When the claimant returned home on August 24 she was pre-occupied with personal matters, such as getting her children ready for school and did not have time to file an appeal. The claimant did not establish a legal excuse for filing a late appeal. The Appeals Section does not have any legal authority to make a decision on the merits of the appeal. This means the August 17 determination cannot be changed and the claimant remains disqualified from receiving benefits as of July 29, 2012.

DECISION:

The representative's August 17, 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 the claimant's appeal. The claimant remains disqualified from receiving unemployment insurance benefits as of July 29, 2012. 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.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css