

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JERMAINE R TRIPP
Claimant

APPEAL NO. 11A-UI-10849-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

**OC: 05/01/11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated June 10, 2011, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on September 13, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. No one participated in the hearing on behalf of the employer. Exhibit A-1 was admitted into evidence at the hearing.

ISSUE:

Was the appeal in this case filed timely?

FINDINGS OF FACT:

An unemployment insurance decision was mailed to the claimant's last-known address of record on June 10, 2011. The decision concluded that he was discharged for work-connected misconduct and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by June 20, 2011.

The claimant received the decision within few days of June 10. He filed a written appeal on August 17, 2011, which is after the time period for appealing had expired. The claimant delayed in filing his appeal because he was arrested and lodged in jail for 45 days starting June 14.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant filed a timely appeal.

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 from unemployment insurance decisions 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 claimant's appeal was filed after the 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 received the decision before he went to jail. Being jailed did not prevent the claimant from writing a letter to Iowa Workforce Department stating he appealed. Being in jail does not provide a valid excuse for missing the appeal deadline.

The 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 appeal was not filed timely, there is no jurisdiction to make a decision on the merits of the appeal.

DECISION:

The unemployment insurance decision dated June 10, 2011, reference 01, is affirmed. The appeal in this case was not timely, and the unemployment insurance decision disqualifying the claimant from receiving benefits remains in effect.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css