

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ALETA L ELINGS

Claimant

APPEAL NO. 14A-UI-06276-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BLAZIN WINGS INC

Employer

OC: 09/15/13

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 April 18, 2014, reference 03, that concluded she had voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on July 11, 2014. 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.

ISSUE:

Did the claimant file a timely appeal?
Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked part time for the employer as a server from October 28, 2013, to February 6, 2014. She had given the employer her school schedule and was assured that the employer would accommodate it. But the claimant discovered that she was scheduled on a couple of days that conflicted with her school schedule. She called in on two days stating could not work because of her classes. Afterward, the claimant reported to work and discovered that the employer had crossed her off the schedule. She asked a supervisor if it meant she was discharged and was told yes.

The claimant filed an additional claim for benefits effective February 2, 2014, and began receiving benefits.

An unemployment insurance decision was mailed to the claimant's last-known address of record on April 18, 2014. The decision concluded she voluntarily quit employment without good cause attributable to the employer and stated the decision was final unless a written appeal was postmarked or received by the Appeals Bureau by April 28, 2014.

The claimant never received the disqualification decision. On June 2, 2014, the Agency issued an overpayment decision stating she was overpaid \$1,512 because of a decision that

disqualified her for voluntarily leaving employment. She filed a written appeal on June 18, 2014, as shown by the postmark date on the envelope, which is after the time for appealing had expired. She delayed in filing her appeal because she thought that she had until June 18 to appeal.

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.

Iowa Admin. Code r. 871-24.35(1) provides:

(1) Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

a. If transmitted via the United States postal service, on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

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). Although the claimant did not initially have the opportunity to file her appeal from the disqualification decision in April, she was notified about the disqualification decision when she received the overpayment decision dated June 2, 2014. Despite this notification, the claimant took 16 days to file her appeal.

Iowa Admin. Code r. 871-24.35(2)c provides:

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the department that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service or its successor.

...

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

In this case, the delay in filing the appeal was unreasonable because she waited for 16 days after receiving actual notice of the disqualification.

DECISION:

The unemployment insurance decision dated April 18, 2014, reference 03, is affirmed. The claimant's appeal was untimely. The decision disqualifying her from receiving unemployment insurance benefits remains in effect.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs