

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN C CURTIS

Claimant

APPEAL NO: 14A-UI-10170-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AT & T MOBILITY SERVICES LLC

Employer

OC: 04/27/14

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 May 20, 2014 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 at the October 20 hearing. Cheryl Rodermund represented the employer. Krista Jackson-Perry and Susan Casteel were available to testify on the employer's behalf. Mike Kelly was present as an observer. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant did not file a timely appeal. This means the May 20, 2014 determination cannot be changed.

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 April 27, 2014. A May 20, 2014 determination (reference 01) was mailed to the parties' address of record. The claimant received the May 20 determination on or before May 27, 2014. The claimant did not notice that the determination informed the parties an appeal had to be filed or postmarked on or before Friday, May 30, 2014.

The claimant did not agree with the determination, but wanted to see his personnel file before he filed an appeal. He contacted the employer in June or July to obtain information from his personnel file. The person who collected this information for the claimant was gone at various times. After the claimant finally received the documentation he believed supported his appeal, he filed his appeal on September 30, 2014.

REASONING AND CONCLUSIONS OF LAW:

The law states that an unemployment insurance determination is final unless a party appeals the determination within ten days after the determination 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 May 30, 2014 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 received the determination before the May 30 deadline. He had a reasonable opportunity to file a timely appeal, but did not.

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) excuses the delay in filing an appeal. The claimant did not establish a legal excuse for filing a late appeal. Waiting for information from the employer before he filed his appeal, does not establish a legal excuse for filing a late appeal. Since filing a timely is required by the law, the claimant should have filed his appeal on or before May 30 and then requested his personnel file from the employer. The Appeals Bureau does not have any legal authority to make a decision on the merits of the claimant's appeal.

DECISION:

The representative's May 20, 2014 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 Bureau does not have jurisdiction to address the merits of the claimant's appeal. This means the May 20, 2014 determination cannot be changed. As of April 27, 2014, the claimant remains disqualified from receiving unemployment insurance benefits. 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/css