

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN J MARTINEZ
Claimant

APPEAL NO. 09A-UI-08143-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRIDGESTONE AMERICAS TIRE
Employer

**Original Claim: 04/19//09
Claimant: Appellant (1)**

Section 96.5-2 – Discharge for Misconduct
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed a department decision dated May 18, 2009, reference 01, that held he was discharged for misconduct on March 17, 2009, and that denied benefits. A telephone hearing was held on June 23, 2009. The claimant participated. The employer did not participate in the hearing. Claimant Exhibit A was received as evidence.

ISSUE:

Whether the claimant filed a timely appeal.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the claimant, and having considered the evidence in the record, finds: The claimant worked for the employer as a full-time mold changer from December 8, 2004 to February 12, 2009. The claimant was incarcerated for a probation violation that his wife reported to the employer.

When the claimant was released from jail on March 16, he tried to contact the employer's human resource department to learn about going back to work. After some unsuccessful attempts, the claimant received a termination letter on March 26 that he was considered a seven-day, no report, voluntary quit as of March 24.

The claimant did not receive the decision mailed to his address of record on May, 18, 2009. When the claimant called his workforce center on May 22 or 23, he learned about the disqualification decision and that he had about seven days left to file an appeal. The warning date to file a timely appeal is May 28. The claimant delayed in filing his appeal with his local workforce center until June 3 due to attending to some personal matters.

The employer did not respond to the hearing notice.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

Another portion of this same Code section dealing with timeliness of an appeal from a representative's decision states that such an appeal must be filed within ten days after notification of that decision was mailed. In addressing an issue of timeliness of an appeal under that portion of this Code section, the Iowa Supreme Court held that this statute prescribing the time for notice of appeal clearly limits the time to do so, and that compliance with the appeal notice provision is mandatory and jurisdictional. Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979).

The administrative law judge considers the reasoning and holding of that court in that decision to be controlling on this portion of that same Iowa Code section which deals with a time limit in which to file a protest after notification of the filing of the claim has been mailed. The employer has not shown any good cause for not complying with the jurisdictional time limit. Therefore, the administrative law judge is without jurisdiction to entertain any appeal regarding the separation from employment.

The administrative law judge concludes that the claimant failed to file a timely appeal, and the administrative law judge lacks jurisdiction to rule on the separation from employment issue.

Although the claimant did not receive the disqualifying decision, he learned about it and was warned that he had seven or so days to file an appeal. He delayed his appeal until June 3 due to personal matters, which is not considered a good cause for failing to file a more timely appeal.

DECISION:

The unemployment insurance decision dated May 18, 2009, reference 01, is affirmed. The claimant failed to file a timely appeal, and the denial decision that he was discharged for misconduct on March 17, 2009, remains in force and effect. Benefits are denied until the claimant re-qualifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw