

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDREW B SALGADO
Claimant

APPEAL NO. 09A-UI-08974-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FBL FINANCIAL GROUP INC
Employer

OC: 02/01/09
Claimant: Appellant (1)

Section 96.5-5 – Severance Pay
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated May 4, 2009, reference 02, that concluded he was not eligible for unemployment insurance benefits for the six weeks ending March 28, 2009, due to the receipt of severance pay. A telephone hearing was scheduled for July 9, 2009. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Amy Lundeen participated in the hearing on behalf of the employer and agreed that a decision could be made based on the information in the file.

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 May 4, 2009. The decision concluded the claimant was not eligible for unemployment insurance benefits for the six weeks ending March 28, 2009, due to the receipt of severance pay and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by May 14, 2009.

The claimant received the decision within the ten-day period for appealing the decision. He filed a written appeal on June 23, 2009, which is after the time for appealing had expired. The claimant delayed in filing his appeal because of his working hours and not knowing his right to appeal.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.6-2 provides in pertinent part:

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.

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 filed his appeal late because of his working hours and not knowing his right to appeal. The claimant had a reasonable opportunity to file a timely appeal.

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 May 4, 2009, reference 02, 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/pjs