

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HOLLY A HANNAN
Claimant

APPEAL NO: 11A-UI-01850-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALEGENT HEALTH
Employer

**OC: 12/26/10
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 January 24, 2011 decision (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant responded to the hearing notice but was not available when she was called. The claimant did not answer her phone and a message was left for her. Alyce Smolsky appeared on the employer's behalf. Jennifer Smith, Jon Zack and Kristen Wolf were available to testify on the employer's behalf.

After the hearing was closed and the employer had been excused, the claimant contacted the Appeals Section. She requested that the hearing be reopened. Based on the administrative record, the claimant's request to reopen the hearing and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is there good cause to reopen the hearing?

Did the claimant file a timely appeal or establish a legal excuse for filing a later appeal?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of December 26, 2010. On January 24, 2011, a representative's determination was mailed to the claimant and employer. The determination held the claimant was not qualified to receive unemployment insurance benefits as of December 26, 2010. The determination also informed the parties an appeal had to be filed or postmarked on or before February 3, 2011.

The claimant received the representative's determination in January 2011. She filed her appeal at her local Workforce office on February 16, 2011.

The claimant did not answer the phone call placed to her at the time of the hearing. By the time the claimant listened to the voice mail left by the administrative law judge and contacted the

Appeals Section, the hearing had been closed and the employer had been excused from the hearing. The claimant requested that the hearing be reopened.

REASONING AND CONCLUSIONS OF LAW:

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c).

When the claimant contacted the Appeals Section for the hearing, she indicated her cell phone did not ring, the administrative law judge's call hearing went directly to voice mail. While the administrative law judge sympathizes with the claimant's situation, she did not establish good cause to reopen the hearing. Therefore, her request to reopen the hearing is denied.

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's determination is mailed to the parties' last-known address, files an appeal from the determination; it is final. Benefits shall then be paid or denied in accordance with the representative's determination. Iowa Code § 96.6(2). Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

The Iowa Supreme Court has ruled that appeals from unemployment insurance determinations must be filed within the time limit set by statute and the administrative law judge has no authority to review a determination 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 February 3, 2011 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 indicated on her appeal letter she received the determination in January. Therefore, she 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) would excuse the delay in filing an appeal. Since the claimant did not establish a legal excuse for filing a late appeal, the Appeals Section has no jurisdiction to make a decision on the merits of the appeal.

DECISION:

The claimant's request to reopen the hearing is denied. The representative's January 24, 2011 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 Section has no jurisdiction to address the

merits of her appeal. This means the claimant remains disqualified from receiving unemployment insurance benefits as of December 26, 2010. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs