

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSH D TUPY
Claimant

APPEAL NO: 12A-UI-07708-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ARCHER-DANIELS-MIDLAND CO
Employer

OC: 02/26/12
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 April 2, 2012 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 in the hearing. Maria Bozaan and Kate O'Connell appeared on the employer's behalf. 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 he remains disqualified from receiving benefits.

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 February 26, 2012. A representative's April 2, 2012 determination was mailed to the parties. The determination disqualified the claimant and informed the parties an appeal had to be filed or postmarked on or before April 12, 2012.

The claimant filed an appeal on June 26, 2012. He received the determination a couple of months before he appealed. He waited to appeal because he wanted to see if he could find a job on his own. When the claimant was unable to find a job, he then appealed so he could possibly receive unemployment insurance benefits until he became re-employed.

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 decision 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 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 appeal was filed after the April 12 deadline for appealing expired.

The next question is whether 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 facts establish the claimant 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 timely appeal, the Appeals Section does not have any legal authority to make a decision on the merits of the appeal. This means the claimant remains disqualified from receiving benefits as of January 2, 2012.

DECISION:

The representative's April 2, 2012 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 does not have jurisdiction to change the April 2, 2012 determination. As a result, the claimant remains disqualified from receiving benefits as of January 2, 2012. 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/kjw