

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRAVIS A DRUCKER
Claimant

APPEAL NO. 11A-UI-03577-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 10/31/10
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 21, 2011 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 was not called for the hearing, because the administrative law judge did not have a record that the claimant called the Appeals Section prior to the hearing to provide a phone number he could be contacted at for the hearing. Susan Pfeifer appeared at the hearing on the employer's behalf. Based on the administrative record, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUES:

Is there good cause to reopen the hearing?

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

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in November 2002. The claimant worked full-time and received safety training. The employer discharged the claimant for violating the employer's safety procedure.

The claimant established a claim for benefits during the week of October 31, 2010. On January 21, 2011, a representative's determination was mailed to the claimant and employer. The determination denied the claimant benefits because he had been discharged for disqualifying reasons.

The claimant appealed at his local Workforce office on March 22, 2011. In his appeal letter, the claimant indicated he did not receive the January 21, 2011 determination. He also stated he

had not filed earlier because he did not understand the unemployment process and did not know what to do.

A hearing notice was mailed to the parties on March 25, 2011, informing them a telephone hearing would be held on April 12 at 8 a.m. The claimant received the hearing notice and thinks he called the Appeals Section and provided the phone number he could be contacted for the hearing. The claimant did not have a control number and there is no record or indication he called the Appeals Section anytime before April 12, 2011.

The claimant was not called for the April 12, 8 a.m. hearing because the administrative law judge did not have any record that the claimant contacted the Appeals Section and provided the phone number he could be contacted at for the hearing. The claimant did not have his hearing notice with him in the morning. He called the Council Bluffs workforce office in an attempt to participate in the hearing, but a recorded message indicated he would be called in the next day or two. The claimant was unable to go to the Council Bluffs workforce office to call the Appeals Section until just before 1 p.m. When the claimant contacted the Appeals Section, he 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).

Since the claimant did not have a control number and there is no record he called the Appeals Section before 1 p.m. on April 12, he did not establish that he followed the hearing notice instructions. Also, waiting to call at 1 p.m. for an 8 a.m. hearing is not reasonable. The claimant did not establish good cause to reopen the hearing. His 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 January 31, 2011 deadline for appealing expired.

Since the claimant has not filed any weekly claims, it is not known what prompted him to file his appeal on March 22, 2011. The record does not establish that the claimant has a legal excuse for filing a late appeal. Therefore, the Appeals Section does not have jurisdiction to make a decision on the merits of his appeal. This means the January 21, 2011 determination remains.

DECISION:

The claimant's request to reopen the hearing is denied. The representative's January 21, 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 does not have jurisdiction to address the merits of his appeal. This means the claimant remains disqualified from receiving unemployment insurance benefits as of October 31, 2010. 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