

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHN JACOB SALINAS**  
Claimant

**APPEAL NO. 07A-UI-04052-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALEGENT HEALTH**  
Employer

**OC: 03/18/07 R: 01  
Claimant: Appellant (1)**

Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

John Jacob Salinas (claimant) appealed a representative's April 5, 2007 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Alegent Health (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 7, 2007. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. Lynn Corbeil, an attorney, appeared on the employer's behalf with Claudia Peterson and Melissa Hanlon as potential witnesses. Based on the administrative record and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**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 unemployment insurance benefits during the week of March 18, 2007. On April 5, 2007, a representative's decision was mailed to the claimant and employer indicating the claimant was not qualified to receive unemployment insurance benefits as of March 18, 2007. The claimant received the representative's decision the same day or the next day. The decision informed the parties an appeal had to be filed on or before April 15, 2007.

The claimant went to his local Workforce office on April 17. He filed an appeal when he was at the Workforce office.

**REASONING AND CONCLUSIONS OF LAW:**

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's decision is mailed to the parties' last-known address, files an appeal from the

decision, the decision is final. Benefits shall then be paid or denied in accordance with the representative's decision. 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 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 April 16 deadline for appealing expired. (Since April 15 was a Sunday, the claimant had until Monday, April 16, to file his appeal.)

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 evidence establishes 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 appeal was not filed timely, there is no jurisdiction to make a decision on the merits of the appeal.

**DECISION:**

The representative's April 5, 2007 decision (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 is disqualified from receiving unemployment insurance benefits as of March 18, 2007. 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.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw