

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONNA J JOHNSON
Claimant

APPEAL NO: 12A-UI-13280-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SHELL ROCK HEALTHCARE CENTER
Employer

**OC: 12/04/11
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 October 17, 2012 determination (reference 04) 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 participated in the hearing. Betty Oren and Katie Cummings appeared on the employer's behalf.

A timeliness of appeal issue was not properly noted on the hearing notice. The parties were told they had a right to know in advance what issues would be addressed at the hearing. They were given the choice of including the timeliness issue at the hearing or another hearing would be rescheduled with all the issues properly noted. Both parties agreed to do the timeliness of appeal on December 3, 2012.

Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant did not file a timely appeal so the October 17 determination cannot be changed.

ISSUE:

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

FINDINGS OF FACT:

The claimant reopened her claim for benefits during the week of September 30, 2012. On October 17, 2012, a determination was mailed to the claimant and the employer. The determination held the claimant disqualified from receiving benefits as of September 21, 2012. The determination also informed the parties an appeal had to be filed or postmarked on or before October 27, 2012.

The claimant received the determination on October 24, 2012. She did not agree with the determination and planned to appeal it. On October 26, the claimant learned her mother's brother had passed away. The claimant left her residence to attend the funeral. She returned

to her residence on October 28, 2012. The claimant knew the deadline to appeal was on October 27.

The claimant went to her local Workforce office on November 6 and filed her appeal. The claimant assumed her appeal would be filed quicker if she went to her local Workforce office instead of mailing an appeal letter.

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 determination 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 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 appeal was filed after the October 27, 2012 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). Since the claimant received the determination on October 24, she had an 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. While the claimant had personal reasons for failing to file a timely appeal, she did not establish a legal excuse for filing a late appeal. Therefore, the Appeals Section does not have any legal authority to make a decision on the merits of the appeal. This means the October 17 determination cannot be changed and the claimant remains disqualified from receiving benefits.

DECISION:

The representative's October 17, 2012 determination (reference 04) 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 the claimant's appeal. This means the claimant remains disqualified from receiving benefits as of September 21, 2012. 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/css