

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAYOSHA A GUYER
Claimant

APPEAL NO. 09A-UI-15575-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LUTHERAN SERVICES IN IOWA INC
Employer

**Original Claim: 09/06/09
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated October 2, 2009, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on November 18, 2009. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Katie Johnston participated in the hearing on behalf of the employer and agreed that a decision could be made based on the information in the administrative file.

ISSUE:

Was the appeal in this case filed timely?

FINDINGS OF FACT:

An unemployment insurance decision was mailed to the claimant's last known address of record on October 2, 2009. The decision concluded and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by October 12, 2009, or the next business day if the date falls on a holiday. October 12, 2009, was a holiday, so the deadline for appealing was October 13, 2009.

The claimant received the decision within the ten-day period for appealing the decision. She filed a written appeal on October 15, 2009, which is after the time period for appealing had expired, as shown by the postmark on the envelope. The reason why the claimant delayed in filing her appeal is unknown.

At 12:30 p.m., the claimant called in and stated she missed the call for the hearing because she could not find her cell phone.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the claimant had good cause for not participating in the hearing. The hearing was at 11:30 a.m. The claimant should have been prepared for the hearing by making

sure she had a phone available to take the call and should have contacted someone else to use a phone if she could not find hers. No good cause has been shown.

The issue in this case is whether the claimant filed a timely appeal.

Iowa Code section 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

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 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). There is no evidence that the claimant did not have a reasonable opportunity to file a timely appeal.

The 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 unemployment insurance decision dated October 2, 2009, reference 01, is affirmed. The appeal in this case was not timely, and the unemployment insurance decision disqualifying the claimant from receiving benefits remains in effect.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw