

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LEON G MEHRING-CRUZ
Claimant

PMX INDUSTRIES INC
Employer

APPEAL 15A-UI-06286-EC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/26/15
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.6(2) – Timeliness of Appeals

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the May 18, 2015, (reference 01) unemployment insurance decision that denied benefits based upon a voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on June 29, 2015. The claimant, Leon Mehring-Cruz participated. The employer, PMX Industries Inc., participated through Vicki Jackson, HR Generalist; and Rod Bishop, the claimant's immediate supervisor. The claimant submitted exhibits relating to the timeliness issue which were marked as Exhibit C and were admitted into the record without objection.

ISSUES:

Was the appeal timely?

Was the separation from employment a discharge for misconduct or a voluntary quit with or without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a machine operator from July 14, 2014, until this employment ended on April 20, 2015. The claimant learned that his employment was terminated, on or about April 20, 2015, because he violated the employer's attendance policy. The claimant also communicated his intention to quit this employment at about that same time.

The claimant applied for unemployment insurance benefits. The IWD representative decision was issued on May 18, 2015. This decision denied these benefits, based on the claimant's voluntarily quitting his employment.

The claimant received the decision on May 22, 2015. His mailing address had changed, and the decision was forwarded to his new post office box. The postmark on the envelope

containing the decision is dated May 18, 2015. The post office forwarding indicia is dated May 19, 2015.

The deadline to appeal the initial decision was May 28, 2015. The decision includes this statement: "This decision becomes final unless an appeal is postmarked by 05/28/2015, or received by Iowa Workforce Appeal Section by that date." I take official notice of a 2015 calendar which shows that May 28, 2015 was a Thursday.

The claimant submitted an appeal dated May 29, 2015. This appeal was received in the IWD Appeals Section via fax on May 29, 2015. The claimant provided information to show why he failed to file his appeal on May 28, 2015, relating to his daughter and his wife and their medical appointments. The claimant did not provide evidence to show why he failed to file the appeal between May 22 and May 28, 2015.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.6(2) requires a claimant to file an appeal of an IWD decision "within ten calendar days after notification was mailed to the claimant's last known address." The Iowa Supreme Court determined that a timely appeal is both mandatory and jurisdictional. *Beardslee v. Iowa Dept. of Job Services*, 276 N.W.2d 373, 377 (Iowa 1979).

In the decision dated May 18, 2015, reference 01, IWD found that the claimant was ineligible for unemployment insurance benefits. This decision includes this statement: "This decision becomes final unless an appeal is postmarked by 05/18/2015, or received by Iowa Workforce Appeal Section by that date."

The claimant's appeal was dated May 29, 2015. The IWD Appeals Section received his appeal on May 29, 2015. His appeal was untimely. It was not postmarked or received in the IWD Appeals Section by May 28, 2015. Despite the claimant's change of address, he received the decision with six days to prepare and submit an appeal within the ten day deadline. Because the claimant's appeal was untimely, I do not have jurisdiction to consider whether or not he was correctly determined to be ineligible for unemployment insurance benefits.

DECISION:

The May 18, 2015, (reference 01) unemployment insurance decision denying benefits is affirmed, because the appellant's appeal was untimely.

Emily Gould Chafa
Administrative Law Judge

Decision Dated and Mailed

ec/css