IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MARILEE J LUCKE
Claimant

APPEAL NO. 07A-UI-09601-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SKYLINE CENTER INC
Employer

**OC: 09/02/07 R: 04
Claimant: Appellant (1)**

Section 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated October 1, 2007, reference 01, that concluded she was discharged for misconduct. A telephone hearing was held on October 30, 2007. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Lisa Hammond 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 1, 2007. The decision concluded she had been discharged for work-connected misconduct and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by October 11, 2007.

The claimant received the decision within the ten-day period for appealing the decision. She filed a written appeal on October 12, 2007, as indicated by the postmark date on the envelope, which is after the time period for appealing had expired.

REASONING AND CONCLUSIONS OF LAW:

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 an 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.

Alternatively, I would conclude based on the evidence in the administrative file, that the claimant was in fact discharged for work-connected misconduct for violating the employer's work rules by taking a client's one-use camera and a post-dated blank check for film processing rather than taking the client out to have her photos processed. She had been previously warned for similar conduct.

DECISION:

The unemployment insurance decision dated October 1, 2007, 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.

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Steven A. Wise
Administrative Law Judge

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Decision Dated and Mailed

saw/css