

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CAROLINA RODRIGUEZ
Claimant

APPEAL NO: 14A-UI-01928-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABM JANITORIAL SERVICES NORTH
Employer

OC: 01/19/14
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 February 6, 2014 determination (reference 01) 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 at the March 12 hearing. Deniece Norman represented the employer. Abra Bannison, Dee Hunter, Wayne Wornell, Beatrice Davalos and Ruth Sosa appeared on the employer's behalf. Ike Rocha and Zahrah Bouhouch interpreted the hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

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 benefits during the week of January 19, 2014. A February 6, 2014 determination was mailed to the parties. The claimant received this determination on February 10, 2014. The claimant had her son translate the determination for her. Her son correctly translated the determination. Initially the claimant decided she would not appeal even though the determination disqualified her from receiving benefits. The determination stated that an appeal had to be filed on or before February 16.

The claimant went to her local Workforce office on February 20, 2014. She was nervous that she would have to pay back money. On February 20, the claimant filed her appeal.

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 February 18 deadline for appealing expired. Since February 16 was a Sunday and the next day was President's Day, a legal holiday, the deadline to appeal was February 18, 2014.

The next question is whether the 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). The claimant had an opportunity to file a timely appeal, but did not. She received the determination on February 10 and her son correctly translated the determination.

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. The claimant did not establish a legal excuse for filing a late appeal. The Appeals Bureau does not have any legal authority to make a decision on the merits of the claimant's appeal. This means the claimant remains disqualified from receiving benefits.

(The parties presented testimony concerning the reasons for the claimant's employment separation.)

DECISION:

The representative's February 6, 2014 determination (reference 01) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. The Appeals Bureau does not have jurisdiction to make a decision on the merits of the claimant's appeal. The claimant remains disqualified from receiving benefits. 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