

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARLOTTE M STALLING
Claimant

APPEAL NO. 11A-UI-12640-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 08/07/11
Claimant: Appellant (1)

Section 96.5-2-a - Discharge
Section 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated September 8, 2011, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on October 19, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. John Fiorelli participated in the hearing on behalf of the employer. Exhibits A-1, One, and Two were admitted into evidence at the hearing. The record was left open for the claimant to send a copy of her mother's obituary to explain her delay in appealing the decision. The document was to be mailed by Friday, October 21, 2011. No document was sent by the claimant.

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 September 8, 2011. The decision concluded she was discharged for work-connected misconduct and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by September 18, 2011.

The claimant received the decision on September 14, 2011, within the ten-day period for appealing the decision. She filed a written appeal on September 26, 2011, which is after the time period for appealing had expired.

The claimant asserted the delay in filing her appeal was because her mother had died on September 17 and she did not get back home after the funeral until September 24, 2011. But she failed to produce the evidence requested to prove that her untimely appeal was due to her mother's death.

REASONING AND CONCLUSIONS OF LAW:

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

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. Iowa Code § 96.6-2.

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). The evidence establishes the claimant had a reasonable opportunity to file a timely appeal. She received the decision on September 14. She had not presented the evidence requested to prove that her untimely appeal was due to her mother's death.

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 September 8, 2011, 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/css