

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH C GARVEY
Claimant

APPEAL NO. 07A-UI-10689-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

U P S FREIGHT
Employer

**OC: 08/12/07 R: 12
Claimant: Appellant (1)**

Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Joseph C. Garvey (claimant) appealed a representative's September 5, 2007 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of U P S Freight (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 4, 2007. The claimant participated in the hearing. The employer responded to the hearing notice, but was not available for the employer. The employer responded to the administrative law judge's 11:00 a.m. call at 1:00 p.m. Although the employer was asked, the employer did not request that the hearing be reopened. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

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 unemployment insurance benefits during the week of August 12, 2007. On September 5, 2007, a representative's decision was mailed to the claimant's current mailing address of record. The claimant lived at the address where the representative's decision was mailed. The claimant does not know if the decision was delivered because he did not receive it. The claimant had problems getting his mail because his roommate through much of his mail away. The claimant was not initially concerned, because he assumed he would be qualified to receive benefits.

After the claimant did not receive benefits that he had claimed, he contacted his local Iowa Workforce office in late September. The workforce representative told the claimant the decision was not in his favor and he needed to appeal if he disagreed with the decision. The claimant did nothing at that time because he was trying to take care of personal problems and move so he could remove himself from a difficult personal relationship.

The claimant moved to Nebraska on October 27, 2007. On November 19, 2007, the claimant talked to a Nebraska Workforce representative, who contacted an Iowa representative. The Iowa representative gave the claimant a fax number to file his appeal. The claimant filed his appeal from the September 5, 2007 representative's decision on November 19, 2007

REASONING AND CONCLUSIONS OF LAW:

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's decision is mailed to the parties' last-known address, files an appeal from the decision, the decision is final. Benefits shall then be paid or denied in accordance with the representative's decision. Iowa Code § 96.6-2. Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983).

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 about two months 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). No appeal submission is considered timely if the delay in filing was unreasonable, as determined after considering all the evidence. 871 IAC 24.35(2)(c). Since the claimant knew a representative's decision disqualified him from receiving benefits in late September, his failure to learn what he needed to do to appeal the decision for about six weeks is unreasonable under the facts of this case. The claimant did not establish a legal excuse for filing a late appeal.

DECISION:

The representative's September 5, 2007 decision (reference 01) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. The Appeals Section has no jurisdiction to address the merits of the claimant's appeal. This means the claimant remains disqualified from receiving unemployment insurance benefits as of September 5, 2007. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw