

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BETTY E MAPLES
Claimant

APPEAL NO. 06A-UI-00327-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PELLA CORPORATION
Employer

**OC: 03/19/06 R: 02
Claimant: Appellant (1)**

Section 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated April 17, 2006, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on January 25, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Richard Carter participated in the hearing on behalf of the employer with potential witnesses, Jill VandeNoord and Omar Seidel. Exhibit A-1 was admitted into evidence at the hearing.

ISSUE:

Was the appeal in this case filed timely?

FINDINGS OF FACT:

The claimant filed a new claim for unemployment insurance benefits with an effective date of March 19, 2006. She participated in a fact-finding interview on April 14, 2006. An unemployment insurance decision was mailed to the claimant's last-known address of record on April 17, 2006. The decision concluded the claimant 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 April 27, 2006.

The claimant received the decision within the ten-day period for appealing the decision. She understood that she had until April 27, 2006, to appeal the decision. She filed a written appeal on January 9, 2007, which is over eight months after the time period for appealing had expired. The claimant delayed in filing her appeal because she initially believed the matter was cut-and-dry and there was no point in appealing. The claimant also suffers from depression. There is no evidence that the claimant was incapable of understanding her appeal rights or the need to send in a written letter of appeal in order to get the decision reversed.

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). The claimant had a reasonable opportunity to file a timely appeal. Although the claimant suffers from depression, she understood her appeal rights, the deadline for appealing, and what she needed to do if she disagreed with the decision. She chose not to appeal because she did not think the decision would change if the matter was appealed.

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 April 17, 2006, 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/kjw