

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WILLIAM L SOLOMON**  
Claimant

**APPEAL NO: 13A-UI-10185-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JOHN MORRELL & CO**  
Employer

**OC: 02/24/13  
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge  
Iowa Code § 96.6(2) – Timely Appeal

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's March 15, 2013 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons.

A hearing was scheduled on October 2, 2013. The claimant responded to the hearing notice. He provided a phone number. Later the administrative law judge learned the phone number had not been entered correctly. Kathy Peterson participated on the employer's behalf. The claimant contacted the Appeals Section after the hearing had been closed and the employer had been excused from the hearing. After the claimant called, it was discovered his phone number had not been recorded correctly. As a result of a clerical error, the hearing was reopened and another hearing was scheduled on October 11, 2013.

The phone number the claimant indicated was correct on October 2 was called on October 11. This phone number was answered by a person who did not know the claimant. The phone number the claimant provided when he established his claim in late February 2013 was also called, but no one answered the phone. The administrative law judge was unable to contact the claimant on October 11, 2013. Kathy Peterson again participated on the employer's behalf.

About an hour after the hearing, the claimant contacted the Appeals Section. The employer agreed that if the claimant called, the timeliness of appeal issue could be addressed without the employer participating. Based on the evidence, the claimant's arguments and the law, the administrative law judge concludes the claimant did not file a timely appeal or establish a legal excuse for filing a late appeal.

**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 February 24, 2013. A determination was mailed to the claimant and employer on March 15, 2013. In March 2013, the

claimant lived in Sioux City. He received the determination shortly after it was mailed on March 15, 2013.

The determination disqualified the claimant from receiving benefits because he had been discharged for excessive, unexcused absenteeism. The determination also informed the parties that an appeal had to be filed on or before March 25, 2013. The claimant was busy with personal matters and did not file an appeal until September 6, 2013.

**REASONING AND CONCLUSIONS OF LAW:**

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 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 deadline for appealing expired.

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). Since the claimant received the March 15, 2013 determination shortly after it was mailed, he had an opportunity to file a timely appeal, but did not.

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 Section does not have any legal authority to make a decision on the merits of the appeal. This means the March 15, 2013 determination cannot be changed and another hearing will not be held.

**DECISION:**

The representative's March 15, 2013 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 Section does not have legal jurisdiction to address the merits of the claimant's appeal. This means the March 15 determination cannot be changed so another hearing to address the reasons for the claimant's separation cannot be scheduled. As of February 24, 2013, the claimant remains disqualified from receiving unemployment insurance benefits until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs