

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SEAN L CRANK

Claimant

APPEAL NO: 11A-UI-15440-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE PALM'S SUPPER CLUB INC

Employer

OC: 10/16/11

Claimant: Respondent (1)

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

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's November 18, 2011 determination (reference 03) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Soheil Daneshvar, the owner, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the employer did not file a timely appeal so the claimant remains qualified to receive benefits.

ISSUE:

Did the employer 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 October 16, 2011. On November 18, 2011, a representative's determination was mailed to the claimant and employer. The determination held the claimant qualified to receive benefits. The determination informed the parties an appeal had to be filed on or before November 28, 2011.

The employer received the representative's determination sometime before November 28, 2011. The employer saw the November 28, 2011 deadline. Since English is not Daneshvar's primary language, he took the determination to his accountant on or before November 28, 2011. The employer wanted his accountant to file an appeal on the employer's behalf. The employer's appeal was faxed on December 2, 2011.

REASONING AND CONCLUSIONS OF LAW:

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's determination is mailed to the parties' last-known address, files an appeal from the determination; it is final. Benefits shall then be paid or denied in accordance with the representative's determination. Iowa Code § 96.6(2). An unemployment benefit's contested

case is commenced with the filing, by mail, facsimile or in person, a written appeal. Iowa Code § 17A-12-9, 871 IAC 26.4(1).

The Iowa Supreme Court has ruled that appeals from unemployment insurance determinations must be filed within the time limit set by statute and the administrative law judge has no authority to review a determination 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 employer's appeal was filed after the November 28, 2011 deadline for appealing expired.

The next question is whether the employer 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 employer had a reasonable opportunity to file a timely appeal, but did not.

The employer'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. Since the employer did not establish a legal excuse for filing a late appeal, the Appeals Section does not have jurisdiction to make a decision on the merits of the appeal.

DECISION:

The representative's November 18, 2011 determination (reference 03) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. Therefore, the Appeals Section does not have jurisdiction to address the merits of the employer's appeal. This means the claimant remains qualified to receive unemployment insurance benefits as of October 16, 2011, provided he meets all other eligibility requirements. Since the employer is not one of the claimant's base period employers, the employer's account will not be charged during the claimant's current benefit year.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css