

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SANDRA M KNOX**  
Claimant

**APPEAL NO: 12A-UI-14100-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALANIZ LLC**  
Employer

**OC: 06/03/12**  
**Claimant: Appellant (1)**

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

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's November 19, 2012 determination (reference 02) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing. Terri Bockting appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

**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 June 3, 2012. She reopened her claim the week of October 28, 2012. On November 19, 2012, a determination was mailed to the parties. The determination held the claimant disqualified from receiving benefits. The determination informed the parties an appeal had to be filed or postmarked on or before November 29, 2012. The employer received the determination on November 21, 2012. The claimant believes she received the determination by November 21 or 23.

The claimant read the information on the determination and saw the deadline to appeal was November 29, 2012. The claimant faxed her appeal on November 30 because she does not have vehicle to get to a fax machine. The claimant did not think about mailing her appeal letter.

**REASONING AND CONCLUSIONS OF LAW:**

The law states an unemployment insurance determination is final unless a party appeals the determination within ten days after the determination 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). The claimant filed her appeal one day late or after the November 29, 2012 deadline.

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 determination by November 23, she had a reasonable 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. Therefore, the Appeals Section does not have any legal authority to make a decision on the merits of her appeal. This means the November 19, 2012 determination cannot be changed and the claimant remains disqualified from receiving benefits.

**DECISION:**

The representative's November 19, 2012 determination (reference 02) is affirmed. The claimant filed a late appeal and did not establish a legal excuse for filing a late appeal. The Appeals Section does not have jurisdiction to address the merits of the claimant's appeal. Therefore, the claimant remains disqualified from receiving benefits as of October 28, 2012. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she 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/tll