

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSE P LUNA
Claimant

APPEAL NO: 06A-UI-10356-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TITAN TIRE CORPORATION
Employer

**OC: 12/25/05 R: 02
Claimant: Appellant (1)**

Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Jose P. Luna (claimant) appealed a representative's September 14, 2006 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Titan Tire Corporation (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 November 8, 2006. The claimant participated in the hearing. Joyce Kain, the human resource manager, appeared on the employer's behalf. Ike Rocha interpreted the hearing. Based on the evidence, the arguments of the parties, 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 reopened his claim for benefits during the week of August 13, 2006. On September 14, 2006 a representative's decision was mailed to the claimant and employer. The decision determined the claimant was not qualified to receive unemployment insurance benefits as of August 16, 2006. The claimant received the September 14 decision within one or two days. The decision informed the parties that the decision was final unless an appeal was filed on or before September 24, 2006.

The claimant did not initially plan to appeal the September 14 decision that disqualified him from receiving benefits. A business acquaintance advised the claimant to file an appeal. The claimant did not file an appeal until October 27, 2006.

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 section 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 more than a month after the September 25 deadline for appealing expired. (Since September 24 was a Sunday, the claimant had until September 25 to file a timely appeal.)

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 evidence establishes the claimant 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. Since 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 make a decision on the merits of the appeal. This means the September 14 decision cannot be changed and the claimant is disqualified from receiving benefits as of August 13, 2006.

(The parties presented testimony concerning the reasons for the claimant's employment separation. Since the merits of the claimant's employment cannot be addressed this evidence is not set forth in the decision.)

DECISION:

The representative's September 14, 2006 decision (reference 02) 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 is disqualified from receiving unemployment insurance benefits as of August 13, 2006. This disqualification continues 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.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs