

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERIC A MC LAUGHLIN
Claimant

APPEAL NO. 10A-UI-06209-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SPARBOE FOODS LLC
Employer

**Original Claim: 03/14/10
Claimant: Appellant (2/R)**

Section 96.5-2-a – Discharge
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed a representative's April 9, 2010 decision (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had voluntarily quit his employment for reasons that do not qualify him to receive benefits. A telephone hearing was held on June 7, 2010. The claimant participated in the hearing. Nita Nurmi, the human resource manager, appeared on the employer's behalf. 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.

ISSUES:

Did the claimant file a timely appeal or establish a legal excuse for filing a late appeal?

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer as a full-time employee in March 2008. On August 24, 2009, the claimant injured himself when he was not at work. The employer learned he was hospitalized and placed him on a leave of absence under the Family Medical Leave Act. By putting him on a leave of absence, the employer guaranteed the claimant his job until December 11, 2009, the date his medical leave ended.

When the claimant did not return to work by December 11 and the employer had not received any recent medical statements from his physician, the employer ended the claimant's employment. The employer considered the claimant to have quit by abandoning his employment. The following week, the employer received a doctor's statement indicating the claimant was not released to work as of December 11.

As of June 7, 2010, the claimant's physician had not yet released him to work. The claimant anticipates he will be released in a couple of weeks with work restrictions.

The claimant established a claim for benefits during the week of March 14, 2010. On April 9, 2010, a representative's decision was mailed to the claimant and employer. This decision held the claimant was not qualified to receive unemployment insurance benefits as of March 14, 2010, because he had voluntarily quit his employment. The decision also informed the parties an appeal had to be received or postmarked no later than April 19, 2010.

The claimant does not know when he received the April 9 decision, but acknowledged he received it before April 19, 2010. The claimant mailed his appeal letter in a U. S. Postal depository around 11:00 p.m. on April 19, 2010. The claimant did not go to his local post office to mail his letter. The claimant's appeal letter was postmarked April 22, 2010.

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 § 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 after the April 19, 2010 deadline for appealing expired. The claimant's assertion that a letter deposited at 11:00 p.m. on April 19 would have a postmark date of April 22, 2010, is not credible. More importantly, since the claimant did not take his appeal letter to his local Workforce office by April 19 or fax it by April 19, it was unreasonable for him to believe his appeal letter would be postmarked on April 19 when he put the letter in a U.S. depository at 11:00 p.m. on April 19.

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 do so.

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

Even though testimony was presented concerning the claimant's employment separation, this issue is not addressed in the decision because the claimant did not file a timely appeal.

DECISION:

The representative's April 9, 2010 decision (reference 01) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. As a result, the Appeals Section has no legal jurisdiction to address the merits of his appeal. Therefore, as of March 14, 2010, the claimant remains disqualified from receiving unemployment insurance benefits. 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/kjw