

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD JEWELL JR
Claimant

APPEAL NO. 06A-UI-11102-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY OF CLINTON
Employer

**OC: 10/15/06 R: 04
Claimant: Appellant (1)**

Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Richard D. Jewell, Jr. (claimant) appealed a representative's November 3, 2006 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of City of Clinton (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 December 5, 2006. The claimant participated through his wife, Theresa Jewell. Matt Brisch, the employer's acting administrator, 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.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer on March 17, 1973. The claimant worked as a full-time heavy equipment operator. The claimant's job required him to possess a valid commercial driver's license.

In early or mid September 2006, the claimant requested paperwork concerning his IPERS account. The claimant thought about retiring when his son had an unexpected medical situation. This was a very emotional time for the claimant. On September 18, 2006, the claimant was arrested for operating a vehicle while intoxicated. This was the claimant's third OWI charge during the course of his employment. As a result of this charge the claimant lost his CDL and could not obtain another one for 12 months. On October 16, 2006, Brisch discharged the claimant because he no longer possessed a valid CDL. The claimant had already decided to resign, but had not informed the employer about his decision.

The claimant established a claim for unemployment insurance benefits during the week of October 15. On November 3, 2006, a representative's decision (reference 01) was mailed to

the claimant and employer. This decision held the claimant was not qualified to receive unemployment insurance benefits as of October 15, 2006.

The claimant received this representative's decision and another November 3 decision (reference 02) on November 4. The claimant was confused because one decision indicated he was eligible and the other said he was not. The claimant contacted his local Workforce office within three or four days of receiving the decision. A representative told the claimant he needed to appeal the decision that indicated he was not eligible to receive benefits. The claimant wrote an appeal letter and dated it as 10/15/06. The postmark on the envelope shows the date of November 15, 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 § 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 on November 15 or after the November 13, 2006 deadline for appealing expired.

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 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 appeal was filed two days late, there is no legal jurisdiction to make a decision on the merits of the appeal. This means the original decision holding the claimant not qualified to receive benefits cannot be changed.

(Even though testimony was taken regarding the reasons for the claimant's employment separation, this decision has not addressed this issue because the claimant did not file a timely appeal.)

DECISION:

The representative's November 3, 2006 decision (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 has no legal jurisdiction to address the merits of the claimant's appeal. This means the claimant remains disqualified from receiving unemployment insurance benefits as of October 15, 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/css