

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRANDON L MIXON**  
Claimant

**APPEAL NO: 12A-UI-03328-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BELLE/SIOUX CITY RIVERBOAT**  
Employer

**OC: 10/23/11  
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 14, 2011 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing. Donna Beck-Willems and Albert Delagharza 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 did not file a timely appeal. This means the November 14, 2011 determination disqualifying him from receiving benefits cannot be changed.

**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 October 23, 2011. On November 14, 2011, a representative's determination was mailed to the claimant and employer. The determination was mailed to the claimant's address of record in November, which was in Sioux City. The determination informed the parties the claimant was not qualified to receive unemployment insurance benefits as of October 23, 2011.

The claimant received the representative's determination before Thanksgiving or November 24, 2011. The claimant did not appeal until April 2, 2012, when he faxed his appeal. The claimant did not appeal until April because he was taking care of personal matters.

**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). 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 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 claimant's appeal was filed after the November 25, 2011 deadline for appealing expired. Since November 24 was Thanksgiving, the deadline to appeal automatically extended to the next day.

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 file a timely appeal or 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 claimant's appeal.

**DECISION:**

The representative's November 14, 2011 determination (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 does not have jurisdiction to address the merits of his appeal. This means the claimant remains disqualified from receiving unemployment insurance benefits as of October 23, 2011. 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.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw