

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MIRIAM RINCON ALVAREZ**  
Claimant

**APPEAL NO. 13A-UI-11070-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MASTERBRAND CABINETS INC**  
Employer

**OC: 07/14/13**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated August 28, 2013, reference 01, that concluded she was discharged for unemployment insurance benefits. A telephone hearing was held on October 22, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Jody Schaefer participated in the hearing on behalf of the employer. Exhibit A-1 was admitted into evidence at the hearing.

**ISSUE:**

Was the appeal in this case filed timely?

**FINDINGS OF FACT:**

The claimant filed a new claim for unemployment insurance benefits effective July 14, and reopened the claim effective August 4, 2013. The claimant participated in a fact-finding interview regarding her eligibility for benefits on August 27, 2013.

An unemployment insurance decision was mailed to the claimant's last-known address of record on August 28, 2013. The decision concluded she was discharged for work-connected misconduct and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by September 7, 2013.

At some uncertain date after August 27, 2013, the claimant traveled to Mexico. She returned to her home around September 21 and found the decision in the mail. The claimant's husband was at home while the claimant was in Mexico, but he did not let her know that she had received correspondence from Iowa Workforce Development.

The claimant did not contact the Waterloo Workforce Development Center until September 30, 2013. With the assistance of Waterloo Workforce Development Center, she faxed in her appeal on September 30, 2013.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant filed a timely appeal.

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. Iowa Code § 96.6-2.

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 about two weeks after the 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 claimant participated in a fact-finding interview on August 27 that she knew would result in a decision regarding whether she was eligible for benefits. She made no arrangement with her husband regarding handling mail from Iowa Workforce Development. The claimant had a reasonable opportunity to file a timely appeal.

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 not filed timely, there is no jurisdiction to make a decision on the merits of the appeal.

**DECISION:**

The unemployment insurance decision dated August 28, 2013, reference 01, is affirmed. The appeal in this case was not timely, and the unemployment insurance decision disqualifying the claimant from receiving benefits remains in effect.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs