

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUAN M MARTINEZ

Claimant

APPEAL NO: 14A-UI-03546-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REMBRANDT ENTERPRISES INC

Employer

OC: 01/05/14

Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed a representative's February 6, 2014 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 at the April 23 hearing with his attorney, Andrea Buckley. Sally Brecher, the human resource manager, and Pamela Winkle, a training specialist, 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 February 6 determination 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 started working for the employer in October 2008. The employer discharged the claimant on January 8, 2014.

The claimant established a claim for benefits during the week of January 5, 2014. The claimant and employer participated at a fact-finding interview. The claimant requested a Spanish interpreter, but this request was not granted. The claims specialist told the parties they had ten days to appeal the determination after it was mailed to them. A representative's determination was mailed to the parties on February 6, 2014. The claimant received the determination by February 14, 2014. While the claimant's ability to read and understand English is limited, he understood he had been disqualified from receiving benefits when he received the February 6 determination.

When his son visited him in early or mid-March, the claimant's son explained the determination to the claimant. The claimant then understood he had ten days to appeal the determination. A friend, who was helping the claimant look for other work, told the claimant that he should have

been granted benefits. The claimant then looked into this matter further and contacted Iowa Legal Aid. The claimant's attorney filed an appeal on the claimant's behalf on April 1, 2014.

REASONING AND CONCLUSIONS OF LAW:

The law states that an unemployment insurance determination is final unless a party appeals the determination within ten days after the determination was mailed to the party's last known address. Iowa Code § 96.6(2). The Iowa Supreme Court has ruled that appeals 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 appeal was filed after the February 16 deadline for appealing expired.

The next question is whether the claimant had a reasonable opportunity to file a timely appeal. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). After the claimant received the determination, he understood that he was not qualified to receive benefits even though the determination was sent to him in English. While it is unclear how much of the determination the claimant understood, the claimant acknowledged that when his son visited him several weeks later, early or mid-March, his son explained the information on the determination. It was not until a friend who helped the claimant look for another job told the claimant that he should have been granted benefits that the claimant looked into appealing the determination. After the claimant contacted Legal Aid, an appeal was filed on his behalf on April 1, 2014.

The evidence indicates 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 Iowa Admin. Code r. 871- 24.35(2) would excuse the delay in filing an appeal. Instead, even after the claimant's son explained that he had appeal rights, the claimant did not pursue an appeal right away. Only after a friend told the claimant that he should have been granted benefits did the claimant look into appealing the determination. The claimant did not establish a legal excuse for filing a late appeal. He failed to take reasonable steps to file an appeal after his son explained his right to appeal. The administrative law judge does not have any legal authority to make a decision on the merits of the appeal.

Even though the parties testified about the reasons for the claimant's employment separation, this issue is not addressed in this decision because the Appeals Section does not have any legal authority to make a decision on the merits of the claimant's appeal.

DECISION:

The representative's February 6, 2014 determination (reference 01) is affirmed. The claimant did not file a timely appeal, take reasonable steps to file a timely appeal after learning he had appeal rights and did not establish a legal excuse for filing a late appeal. The Appeals Section

does not have any legal jurisdiction to address the merits of the claimant's appeal. This means the February 6 determination cannot be changed and the claimant remains disqualified from receiving benefits as of January 4, 2014. 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