

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RODNEY A LONG
Claimant

APPEAL NO: 14A-UI-12571-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OMG MIDWEST INC
Employer

OC: 01/05/14
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, 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 January 5, 2015 hearing. Kathy O'Leary, a human resource assistant, 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 so the November 14 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 November 2002. He worked as a truck driver. The claimant understood the employer did not require drivers to stay overnight anywhere. When the claimant was asked to take a load that included an overnight layover, the claimant refused and left work on October 22. On October 27, the claimant received a call that he was terminated. The claimant talked to the CEO. The employer's CEO agreed the claimant would return to work on October 29. The claimant understood his employment record would not indicate any employment separation.

The claimant filed an additional claim for benefits during the week of October 26, 2014. As a result of reopening his claim, a November 14, 2014 determination was mailed to the parties. This determination disqualified the claimant from receiving benefits as of October 26, 2014. The determination informed the parties an appeal had to be filed or mailed on or before November 24, 2014.

The claimant received the November 14, 2014 determination before November 24. He did not immediately file an appeal because he had returned to work for the employer. When the claimant noticed he had to earn ten times his weekly benefit amount before he was again

qualified to receive benefits, he contacted the employer to support his appeal of this determination. Both the claimant and employer filed letters appealing the November 14 determination on December 5, 2014.

After the claimant returned to work on October 29, 2014, he has earned gross wages of over \$6000. The claimant's maximum weekly benefit amount is \$408.

REASONING AND CONCLUSIONS OF LAW:

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 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 November 24, 2014 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). The claimant received the determination before November 24. He had a reasonable opportunity to file a timely appeal, but did not.

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) excuses the delay in filing an appeal. The claimant did not establish a legal excuse for filing a late appeal. The Appeals Bureau does not have any legal authority to make a decision on the merits of the claimant's appeal. This means the November 14 determination cannot be changed and the claimant is not eligible to receive partial benefits for the week ending November 1.

The claimant has earned requalifying wages or more than \$4080 in wages since October 29, 2014. He is no longer disqualified from receiving benefits based on this employment separation.

DECISION:

The representative's November 14, 2014 determination (reference 01) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. Therefore, the Appeals Bureau does not have any legal jurisdiction to address the merits of his appeal. This means the November 14, 2014 determination cannot be changed and the claimant is not qualified to receive benefits as of October 26, 2014.

Since the claimant has earned requalifying wages, this employment separation will not disqualify him from receiving benefits when he establishes a new benefit year.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs