

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRANDYN BUTLER
Claimant

APPEAL NO: 14A-UI-10157-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORDSTROM INC
Employer

**OC: 05/04/14
Claimant: Appellant (1)**

871 IAC 24.23(10) – Leave of Absence
Iowa Code § 96.6(2) – Timeliness of Appeal

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's June 6, 2014 determination (reference 02) that held him ineligible to receive benefits as of May 4, 2014, because he was on an approved leave of absence. The claimant participated at the October 21 hearing. David Williams, an Equifax representative, appeared on the employer's behalf. Jill McDowell appeared at the employer's witness. 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 June 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 established a claim for benefits during the week of May 4, 2014. A June 6 determination was mailed to the claimant and employer. This determination held the claimant ineligible to receive benefits as of May 4, 2014, because he was on an approved leave of absence. The determination also informed the parties an appeal had to be filed or postmarked on or before June 16, 2014.

The claimant received the June 6 before June 15, the date he returned to work. He did not agree with the determination, but because he went back to work he did not do anything.

In early September, the claimant's employment ended and he reopened his claim during the week of September 7. He was told he should appeal the June 6 determination. The claimant filed an appeal on September 30, 2014.

A fact-finding interview is scheduled with the claimant and employer on October 22 to determine the reasons for his September employment separation.

REASONING AND CONCLUSIONS OF LAW:

The law states 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 June 16, 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 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) would excuse the delay in filing an appeal. The claimant did not establish a legal excuse for filing a late appeal. The Appeals Section does not have any legal authority to make a decision on the merits of the appeal. This means the June 6, 2014 determination cannot be changed.

DECISION:

The representative's June 6, 2014 determination (reference 02) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. The Appeals Bureau does not have jurisdiction so the June 6 cannot be changed. The claimant remains ineligible to receive benefits from May 4 until, June 15, because he was on an approved leave of absence.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css