

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

AARON M GRUBIC
Claimant

APPEAL NO. 14A-UI-11173-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAMILIES FIRST COUNSELING SERVICES
Employer

OC: 09/28/14
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 October 15, 2014, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on November 17, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Brittney Stevens participated in the hearing on behalf of the employer with a witness, Jennifer Steinbronn.

ISSUE:

Was the appeal in this case filed timely?

FINDINGS OF FACT:

An unemployment insurance decision was mailed to the claimant's last-known address of record on October 15, 2014. The decision concluded the claimant 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 October 27, 2014.

The claimant received the decision within the ten-day period for appealing the decision. He sent in his appeal using FedEx priority overnight service on October 27, 2014 as shown on copy of the envelope that the appeal was in. The appeal was received in the Appeal Bureau on October 28, 2014.

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 files an appeal from 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).

The unemployment insurance rules 871 IAC 24.35(1) provide:

Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

a. If transmitted via the United States postal service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

b. If transmitted by any means other than the United States postal service on the date it is received by the division.

In this case, the appeal was not transmitted by the **United States Postal Service**, it was transmitted by FedEx. As a result, the appeal has been considered filed when it was received, which was October 28—a day after the deadline for appealing. A properly promulgated rule has the force of law and cannot be ignored in this case.

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 October 15, 2014, 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.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/can