

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NATALIE H MILLER**  
Claimant

**APPEAL NO: 11A-UI-15881-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE UNIVERSITY OF IOWA**  
Employer

**OC: 10/30/11**  
**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 December 1, 2011 determination (reference 02) disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing. Mary Eggenburg, Janice Tener, and Becky O'Rourke 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 is not qualified to receive benefits.

**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 March 2010. She worked as full-time hemodialysis technician. Her employment ended on October 18, 2011, after the employer learned she had not obtained or applied for certification that she was required to obtain by September 2011.

The claimant established a claim for benefits during the week of October 30, 2011. On December 1, 2011, a representative's determination was mailed to the claimant and employer. The determination disqualified the claimant from receiving unemployment insurance benefits. The determination also informed the parties an appeal had to be filed on or before December 11, 2011.

The claimant received the representative's determination by December 6, 2011. She was busy with matters in her personal life. She misplaced the determination and called her local Workforce on December 13, 2011. A representative advised the claimant to file her appeal that day if she disagreed with the determination. The claimant faxed her appeal on December 13, 2011.

## **REASONING AND CONCLUSIONS OF LAW:**

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's determination is mailed to the parties' last-known address, files an appeal from the determination; it is final. Benefits shall then be paid or denied in accordance with the representative's determination. Iowa Code § 96.6(2). Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An unemployment benefits contested case is commenced with the filing, by mail, facsimile or in person, a written appeal. Iowa Code § 17A-12(9), 871 IAC 26.4(1).

The Iowa Supreme Court has ruled that appeals from unemployment insurance determinations must be filed within the time limit set by statute and the administrative law judge has no authority to review a determination 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 after the December 12, 2011 deadline for appealing expired. When the deadline falls on a weekend or holiday, the deadline automatically extends to the next business day. December 11 was a Sunday.

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 evidence establishes 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. Even if a representative did not give her correct information, the claimant did not contact her local Workforce office until December 13 or a day late. Since the claimant did not establish a legal excuse for filing a late appeal, the Appeals Section does not have jurisdiction to make a decision on the merits of the appeal. This means the determination disqualifying the claimant from receiving benefits remains in effect.

In the alternative, if the claimant had a legal excuse for filing a late appeal, the claimant committed work-connected misconduct when she failed to take reasonable and prudent steps to obtain the certificate that her job required.

(The parties testified about the reasons for claimant's termination. These facts are not set forth in the decision because the claimant did not establish a legal excuse for filing a late appeal.)

## **DECISION:**

The representative's December 1, 2011 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 Section does not have jurisdiction to address the merits of her appeal. This means as of October 30, 2011, the claimant remains disqualified from receiving unemployment insurance

benefits. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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