

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEWEL D GASTON**  
Claimant

**APPEAL NO: 13A-UI-04615-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEST LIBERTY FOODS LLC**  
Employer

**OC: 01/06/13**  
**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 January 28, 2013 determination (reference 01) that 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. Alejandro Rojas appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant did not file a timely appeal. The Appeals Section does not have any legal authority to review the reasons for the claimant's employment separation so the January 28, 2013 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 January 6, 2013. After a fact-finding interview was held in which the employer participated but the claimant did not, a claims specialist issued the January 28, 2013 determination that disqualified the claimant from receiving benefits. The determination informed the parties that it was final unless an appeal was filed or postmarked on or before February 7, 2013.

The claimant received the January 28 determination in late January. Rojas received the determination on February 2, 2013. The claimant did not understand the appeal process or that she had to file a written appeal on or before February 7, 2013. After a relative helped the claimant, she filed her appeal at her local Workforce office on April 18, 2013.

**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 February 7, 2013 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). Since the claimant received the determination by late January or early February 2013, she had an 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. Since 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. Therefore, the claimant remains disqualified from receiving benefits.

**DECISION:**

The representative's January 28, 2013 determination (reference 01) 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 any legal authority to address or look at the reasons for the claimant's employment separation. This means the Appeals Section cannot change the January 28 determination and the claimant remains disqualified from receiving benefits as of January 6, 2013. 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

dlw/pjs