

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GERALD F HOXSIE
Claimant

APPEAL NO. 10A-UI-05932-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WALL STREET MISSION
Employer

**Original Claim: 05/03/09
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The employer appealed a representative's April 5, 2010 decision (reference 03) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non-disqualifying reasons. A telephone hearing was held on May 28, 2010. The claimant participated in the hearing. The employer did not respond to the hearing notice or participate in the hearing. Based on the administrative record and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer 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 3, 2009. He reopened his claim the week of March 7, 2010. On April 5, 2010, a representative's decision was mailed to the claimant and employer. The decision held the claimant qualified to receive unemployment insurance benefits as of March 7, 2010. The decision informed the parties that an appeal had to be filed or postmarked on or before April 15, 2010. The employer faxed its appeal on April 20, 2010.

REASONING AND CONCLUSIONS OF LAW:

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's decision is mailed to the parties' last-known address, files an appeal from the decision, the decision is final. Benefits shall then be paid or denied in accordance with the representative's decision. 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).

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). In this case, the employer's appeal was filed after the April 15, 2010 deadline for appealing expired.

The administrative record does not establish that the employer had a legal excuse for filing a late appeal. 871 IAC 24.35(2). Since the employer did not file a timely appeal or 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.

DECISION:

The representative's April 5, 2010 decision (reference 03) is affirmed. The employer 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 the employer's appeal. This means the claimant remains qualified to receive unemployment insurance benefits as of May 7, 2010. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw