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

AUSTIN M BARKER
Claimant

APPEAL NO: 12A-UI-14572-DWT

ADMINISTRATIVE LAW JUDGE
DECISION

HY-VEE INC
Employer

OC: 11/04/12
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 November 30, 2012 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing. Bruce Burgess, a representative with Corporate Cost Control, appeared on the employer's behalf. Max Dains 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. As a result, the November 30 determination cannot be changed and the claimant remains disqualified from receiving benefits.

ISSUE:

Did the claimant file a timely appeal or establish a legal excuse for fling a late appeal?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of November 4, 2012. A November 30, 2012 determination was mailed to both parties. The determination held the claimant disqualified from receiving benefits. The determination also informed the parties an appeal had to filed or postmarked on or before December 10, 2012.

The claimant received the determination on November 30, 2012. After he received the determination, he talked to his parents about whether he should or should not appeal the determination. On December 11, the claimant went to his local Workforce office and filed his appeal.

REASONING AND CONCLUSIONS OF LAW:

The law states that 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 December 10, 2012 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 received the determination before December 10. He did not file his appeal immediately because he talked to his parents about whether he should or should not appeal. The claimant did not read or notice on the determination that he needed to file his appeal on or before December 10, 2012.

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 November 30, 2012 determination cannot be changed and the claimant remains disqualified from receiving benefits.

DECISION:

The representative's November 30, 2012 determination (reference 01) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. Therefore, the Appeals Section does not have jurisdiction to address the merits of the claimant's appeal. The claimant remains disqualified from receiving benefits as of November 4, 2012. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he 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/tll