

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KYLE A GILPIN
Claimant

APPEAL NO: 12A-UI-06451-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY OF FAIRFIELD
Employer

OC: 03/07/10
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 April 5, 2010 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. Derek Wulfekuhle 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 did not file a timely appeal so the April 5, 2010 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 March 7, 2010. The claimant established this claim because he was on a temporary layoff from his full-time employer, Dexter Laundry. The claimant filed only for one week of benefits on this claim. When the claimant established his claim, he assumed he was filing against Dexter Laundry, not the employer.

On April 5, 2010, a representative's determination was mailed to the claimant and employer. The claimant received the determination within a few days after the determination had been mailed. The claimant was back working at Dexter after a week layoff and assumed the March 7, 2010 determination did not have any effect on him.

After the claimant received a March 28, 2012 overpayment determination, he tried to contact his local Workforce office in an attempt to understand why he was held overpaid for one week of benefits. When no one from the Workforce office responded to the claimant's questions, he finally filed an appeal on May 24, 2012.

REASONING AND CONCLUSIONS OF LAW:

The law states that an unemployment insurance decision is final unless a party appeals 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 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 more than two years after the April 15, 2010 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 established the time to file a timely appeal, but did not because he did not believe the determination had any adverse legal consequence on him.

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) excuses the delay in filing an appeal. Since the claimant did not establish a legal excuse for filing a timely appeal, the Appeals Section does not have any legal authority to make a decision on the merits of the appeal. This means the April 5, 2010 determination cannot be changed.

DECISION:

The representative's April 5, 2010 determination (reference 01) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. This means the determination disqualifying the claimant from receiving benefits as of January 18, 2010, cannot be changed. This disqualification continues until he 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.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css