

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CURTIS R ROBBINS**  
Claimant

**APPEAL NO. 10A-UI-01339-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ANEMOMETRY SPECIALISTS INC**  
Employer

**Original Claim: 11/29/09  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated January 7, 2010, reference 01, that held he was discharged for misconduct on November 30, 2009, and that denied benefits. A telephone hearing was held on February 26, 2010. The claimant participated. Lisa Zalaznik, HR Representative, participated for the employer. Claimant Exhibit A was received as evidence.

**ISSUE:**

Whether the claimant filed a timely appeal.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the claimant and having considered the evidence in the record, finds: The claimant worked for the employer as a full-time field technician from December 10, 2007 to December 4, 2009. The claimant was discharged for violation of the employer's unauthorized driving policy resulting in an accident, insubordination, unsatisfactory job performance, and disruptive behavior.

The claimant had his uncle open his mail while he was in Missouri. The uncle did receive the department decision mailed to claimant's address of record on January 7, 2010. The uncle informed the claimant that the decision denied benefits and the procedure on how to appeal. The decision states the appeal deadline is January 17, which is extended to January 19 because of the holiday on January 18. The claimant delayed in filing his appeal when he faxed to Unemployment Appeals on January 25.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week

with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

Another portion of this same Code section dealing with timeliness of an appeal from a representative's decision states that such an appeal must be filed within ten days after notification of that decision was mailed. In addressing an issue of timeliness of an appeal under that portion of this Code section, the Iowa Supreme Court held that this statute prescribing the time for notice of appeal clearly limits the time to do so, and that compliance with the appeal notice provision is mandatory and jurisdictional. Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979).

The administrative law judge considers the reasoning and holding of that court in that decision to be controlling on this portion of that same Iowa Code section which deals with a time limit in which to file a protest after notification of the filing of the claim has been mailed. The employer has not shown any good cause for not complying with the jurisdictional time limit. Therefore, the administrative law judge is without jurisdiction to entertain any appeal regarding the separation from employment.

The administrative law judge concludes that the claimant failed to file a timely appeal, and the administrative law judge lacks jurisdiction to rule on the separation from employment issue.

The claimant learned about the decision and could have appealed in a timely manner. The claimant did not offer a good cause for the delay.

**DECISION:**

The department decision dated January 7, 2010, reference 01, is affirmed. The claimant failed to file a timely appeal, and the denial decision that he was discharged for misconduct on November 30, 2009, remains in force and effect. Benefits are denied until the claimant re-qualifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/kjw