

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DEBRA V VANORNAM**  
Claimant

**APPEAL NO. 13A-UI-08127-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FATHER FLANAGAN'S BOYS' HOME**  
Employer

**OC: 06/09/13**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated June 28, 2013, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on August 15, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Susan Chmelovsky participated in the hearing on behalf of the employer with witnesses, Bob Drake and Shannon Murray. Exhibits A-1 and 1 through 19 were admitted into evidence at the hearing.

**ISSUE:**

Was the appeal in this case filed timely?

**FINDINGS OF FACT:**

An unemployment insurance decision was mailed to the claimant's last-known address of record on June 28, 2013. The decision concluded she had been discharged for work-connected misconduct and stated the decision was final unless a written appeal was postmarked or received by the Appeals Bureau by July 8, 2013.

The claimant received the decision within the ten-day period for appealing the decision. She completed the appeal on July 8, 2013, but left it in her mailbox to be picked up by her postal carrier. She did not take it to the post office to assure that it would be postmarked on July 8, 2013. She is not sure when the postal carrier picked up the letter of appeal. The appeal letter was postmarked July 9, 2013, and was received by Appeals Bureau on July 11, 2013.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant filed a timely appeal.

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. Rules 871 IAC 24.35(1) and 871 IAC 26.4(2) state appeals are considered filed when postmarked, if mailed.

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 claimant's appeal was postmarked after the deadline for appealing expired. The claimant has not established that the postal carrier picked up the letter on July 8.

The next question is whether the claimant had a reasonable opportunity to file an appeal in a timely fashion. 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 appeal letter but waited until the last day to prepare her appeal. She had a reasonable opportunity to file a timely appeal.

The 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 appeal was not filed timely, there is no jurisdiction to make a decision on the merits of the appeal.

**DECISION:**

The unemployment insurance decision dated June 28, 2013, reference 01, is affirmed. The appeal in this case was not timely, and the unemployment insurance decision disqualifying the claimant from receiving benefits remains in effect.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs