

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

TIFFANY N PHILLIPS  
709 W 3<sup>RD</sup> ST APT 1  
WATERLOO IA 50701

APAC CUSTOMER SVCS OF IOWA LLC  
C/O TALX UCM SERVICES INC  
PO BOX 283  
ST LOUIS MO 63166 0283

Appeal Number: 04A-UI-11955-DWT  
OC: 10/10/04 R: 03  
Claimant: Respondent (4/R)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.6-2 – Timeliness of Appeal & Timeliness of Protest

STATEMENT OF THE CASE:

APAC Customer Services of Iowa LLC (employer) appealed a representative's October 26, 2004 decision (reference 02) that concluded Tiffany N. Phillips (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the employer had not filed a timely protest. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 1, 2004. The claimant participated in the hearing. Tara Wolverton, a TALX claims services representative, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the employer file a timely appeal or establish a legal excuse for filing a late appeal?

Did the employer file a timely protest?

#### FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits during the week of October 10, 2004. On October 12, 2004, the Department mailed a notice to the employer indicating the claimant had filed a claim for benefits and the maximum amount of money that could be charged against the employer's account. The notice of claim indicated the employer had until October 22, 2004 to respond to the notice.

The employer received the notice of claim on October 14, 2004. The employer mailed the completed form to the Department on October 22, 2004.

On October 26, 2004, a representative's decision was mailed to the claimant and employer indicating the claimant was qualified to receive unemployment insurance benefits and the employer's account was subject to charge because the employer had not filed a timely protest. The employer received the October 26 decision on October 29, 2004. The employer mailed an appeal letter to the Appeals Section on November 5, 2004. The postmark on the appeal envelope shows a postmark date of November 6, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

The law provides that all interested parties shall be promptly notified about an individual filing a claim. The parties have ten days from the date of mailing the notice of claim to protest payment of benefits to the claimant or appeal a representative's decision. Iowa Code §96.6-2. Another portion of Iowa Code §96.6-2 dealing with timeliness of an appeal from a representative's decision states 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 has held that this statute clearly limits the time to do so, and compliance with the appeal notice provision is mandatory and jurisdictional. Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979). 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).

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 evidence establishes the claimant had a reasonable opportunity to file a timely appeal. The employer could have filed the appeal a week earlier instead of waiting until the last day of the deadline. The employer, however, mailed the appeal letter from the employer's office on November 5, 2004. The United States Postal Service failed to timely and properly postmark mail from the employer's facility.

The evidence establishes the employer's apparent failure to file a timely appeal was due to an error, delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) excuses the delay in filing an appeal. The employer established that the employer filed a timely one on December 5, 2003. Therefore, the Appeals Section has jurisdiction in this matter.

The reasoning and holding of the Beardslee court is considered controlling on the portion of Iowa Code §96.6-2 which deals with the time limit to file a protest after the notice of claim has been mailed to the employer. The facts indicate the employer received the notice of claim on October 14, 2004 or within the initial ten-day deadline. The employer filed a protest on October 22, 2004. The employer filed a timely protest. Therefore, the issue of whether the claimant's employment separation was for nondisqualifying or disqualifying reasons is remanded to the Claims Section to investigate and issue a written decision to both parties.

DECISION:

The representative's October 26, 2004 decision (reference 02) is modified in the employer's favor. The employer filed a timely appeal. Therefore, the Appeals Section has legal jurisdiction to address the employer's appeal. The employer filed a timely protest. The issue of whether the claimant's employment separation was for disqualifying or nondisqualifying reasons is remanded to the Claims Section to investigate and issue a written decision to both parties.

dlw/tjc