

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERIC R HOELZEN
Claimant

APPEAL NO. 08A-UI-08860-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RIVERSIDE CASINO AND GOLF RESORT
Employer

**OC: 08/17/08 R: 03
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge
Section 96.6-2 – Timely Appeal

STATEMENT OF THE CASE:

Eric R. Hoelzen filed an appeal from an unemployment insurance decision dated September 11, 2008, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held October 16, 2008 with Mr. Hoelzen participating. Kris Smith participated on behalf of the employer, Riverside Casino and Golf Resort. Exhibit D-1, the claimant's appeal letter, was admitted into evidence.

ISSUE:

Does the administrative law judge have jurisdiction to rule on the merits of this case?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The decision from which Eric R. Hoelzen has appealed states that it would become final unless an appeal was postmarked by September 21, 2008 or received by the Agency by that date. Mr. Hoelzen, who had missed the fact-finding interview, received the decision but did not file an appeal until speaking with Kris Smith, the employer's participant in that interview. He filed his appeal on October 2, 2008.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the claimant has filed a timely appeal. He has not.

Iowa Code section 96.6-2 gives parties ten days from a fact-finding decision to file an appeal. The statute says that if no appeal is filed within that time, benefits shall be paid or denied in accordance with the decision. The Supreme Court of Iowa has ruled that the time limit is jurisdictional. See Franklin v. Iowa Department of Job Service, 277 N.W.2d 877, 881 (Iowa 1979). In the absence of a timely appeal, the administrative law judge has no jurisdiction to rule on the merits of the case.

The evidence in this record persuades the administrative law judge that Mr. Hoelzen could have but did not file a timely appeal. Instead of filing the appeal immediately and then speaking with Ms. Smith, he elected to delay filing the appeal until after he had spoken to her. This delay deprives the administrative law judge of jurisdiction to rule on the merits of the case.

DECISION:

The unemployment insurance decision dated September 11, 2008, reference 01, has become final and remains in effect. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs