

**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**

**MARK R ADAMSON
17 PROSPECT PL
NEW CANAAN CT 06840**

**BRENTON COMMUNITIES INC
BRENTON HOMES
558 28TH ST
DES MOINES IA 50309**

**Appeal Number: 05A-UI-01842-AT
OC: 01/09/05 R: 02
Claimant: Appellant (1)**

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, 4th 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 is 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.6-2 – Timely Appeal

STATEMENT OF THE CASE:

Mark R. Adamson filed an appeal from an unemployment insurance decision dated February 8, 2005, reference 01, which disqualified him for benefits. After due notice was issued, a telephone hearing was held on March 7, 2005 with Mr. Adamson participating. The employer, Brenton Communities, Inc., provided a telephone number at which two witnesses could be contacted. When called at the time of the hearing, that phone number was answered by a recording. The administrative law judge left a message for the witnesses to contact the appeals bureau immediately if they wished to participate. There was no further contact from the employer until after the record had been closed for more than an hour. Exhibit D-1, the claimant's appeal letter, and Exhibit D-2, the administrative file, were admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: The decision from which Mark R. Adamson has appealed states that it would become final unless an appeal was postmarked by February 18, 2005 or received by the agency by that date. The decision was mailed to Mr. Adamson's correct address on February 8, 2005. He received it on February 11 or 12, 2005. On February 13, 2005 Mr. Adamson's mother-in-law passed away. On February 16 or 17 he realized that he was nearing the end of the appeal period. He did not fax an appeal to the agency, however, until February 22, 2005.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the administrative law judge has jurisdiction to rule on the merits of this case. He does not.

Iowa Code section 96.6-2 gives an individual ten days from the date of the fact-finding decision to file an appeal. The Supreme Court of Iowa has ruled that the time limit in the statute is jurisdictional. See Franklin v. Iowa Department of Job Service, 277 N.W.2d 877, 881 (Iowa 1979). Additional time may be granted for an appeal if the delay is the fault of the Agency or the United States Postal Service. See 871 IAC 24.35.

The evidence in this record establishes that Mr. Adamson received the adverse decision six or seven days before February 18. It also establishes that he knew that the time for filing the appeal was running short on February 16 or 17. Under these circumstances, his appeal on February 22, 2005 cannot be accepted as timely.

DECISION:

The unemployment insurance decision dated February 8, 2005, reference 01, has become final. 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.

kjf/pjs