BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building, 4TH Floor
Des Moines, Iowa 50319
eab.iowa.gov

PATRICK J KNEPPER	:	
	:	**HEARING NUMBER:** 22B-UI-14760
Claimant	:	
	:	
and	:	**EMPLOYMENT APPEAL BOARD**
	:	**DECISION**
REM IOWA COMMUNITY SVCS INC	:	
	:	
Employer	:	

N O T I C E

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-2-A, 96.6-2

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE DENIED

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. The administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED**.

The Claimant argues that his appeal was in fact timely even though it was transmitted after midnight on Tuesday, June 29, 2021. The Claimant argues that a day is "from midnight to midnight" citing *State v. Sheets*, 338 NW 2d 886 (Iowa 1983). There is no question that a day starts as of midnight and then ends once the next midnight comes. The Claimant argues that "to" in this context means "through the first minute." Basic English, the agency regulations, and common sense belie the argument.

The question is what is meant by "from" midnight "to" midnight. In this context "from" is "used as a function word to indicate a starting point." *Webster's 3rd International Dictionary* (1960). So, as seems obvious, "from midnight" means "starting at midnight." It would be nearly nonsensical to say "from midnight" but actually mean "from a minute after midnight." So this much is clear: a day starts at 12:00 a.m.

What then does "to midnight" mean? The Claimant argues that "to midnight" means "throughout the first minute of midnight." The more natural meaning, of course, is "up to midnight" or equivalently "ending at midnight." We think it clear this is the correct interpretation: a day runs staring at midnight and then ending as soon as the clock reads midnight again. This follows not only from plain English but also once we agree that a day starts "from midnight."

Let us suppose a day starts at 12:00 midnight, but does not end until the clock has passed noon and again reads 12:01 a.m. What of the next day? It also starts at 12:00 midnight, and so includes that minute from 12:00 to 12:01 as well. So the Claimant gives us days with an overlapping minute. This can only be avoided by using an entirely unnatural reading of "from midnight" to mean "once the first minute of midnight has elapsed." So days would run from 12:01 to 12:01. This makes no sense, but even going with it the question is why stop at the first minute? Why not the first hour? No logical or linguistic reason to stop at one minute appears once we start toying with the meaning of "from" and "to" in this context. The Claimant's argument puts more than 24 hours in a day, and then overlaps the excess time to make it work out. The clocks of the world disagree.

The fact is "finis unius diei est principium alterius.," that is, "the end of one day is the beginning of another." *Reports of Edward Bulstrode*, Vol. 2 p. 305 (1688) [*Butler v. Fincher*]. This has been the law for centuries and common sense for longer. It is why millions of people shout "Happy New Year" at 12:00 and not at 12:01, and why millions attend a "midnight" Christmas service, not an "after midnight" service. The day starts at the stroke of midnight, and then ends upon the stroke the next midnight. There is no overlap. The fact that this is common sense, and also that it is expressly stated in a published regulation of IWD, overcomes the argument about due process. 871 IAC 26.4(5).

As far as the Claimant's ADHD we note that the Workforce regulation states that "the submission of any …appeal…not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service." 871-24.35(2). Otherwise the 10-day appeal period is not overcome simply by good cause. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979); *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979); *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974). We note further that this Claimant had not ten days but twelve days to appeal because the deadline fell on a Saturday. This extension of time is somewhat anachronistic where appeals can be submitted by webpage, as was done here. Nevertheless the extension benefits the appellant, and remains the law. Yet the Claimant did not submit his appeal until the 13th day. That appeal was typed into a webpage and was less than 120 words long. The Claimant has failed to establish that going to a webpage and typing 120 words was so far beyond his abilities that he was denied *due process* by having 12 days to appeal rather than 13. We cannot find the Claimant was denied a reasonable opportunity to appeal under the circumstances of this case. For these reasons we affirm the Administrative Law Judge's ruling on timeliness.

Finally, even if we found the appeal timely we would affirm the Administrative Law Judge's ruling on the merits of the appeal for the reasons stated by the Administrative Law Judge.

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James M. Strohman

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Ashley R. Koopmans

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Myron R. Linn

RRA/fnv