

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RODNEY D BROWN
Claimant

APPEAL NO. 12A-UI-08853-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EMPLOYER'S SERVICE BUREAU INC
Employer

OC: 07/10/11
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated August 1, 2011, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on August 17, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Joe Rausenberger participated in the hearing on behalf of the employer. Exhibit A-1 was admitted into evidence at the hearing.

ISSUE:

Was the appeal in this case filed timely?

FINDINGS OF FACT:

The claimant filed a new claim for unemployment insurance benefits effective July 10, 2011, after his employment with the employer ended. The employer protested the claim and participated in the fact-finding interview on July 29, 2011.

An unemployment insurance decision was mailed to the employer's last-known address of record on August 1, 2011. The decision concluded the claimant's discharge was not for work-connected misconduct and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by August 11, 2011.

The employer received the decision within the ten-day period for appealing the decision. The person who normally handles unemployment insurance matters, Joe Rausenberger, was on vacation when the decision was received and does not recall seeing the decision. It is likely that someone else in management received the decision. No appeal was filed within 10 days.

When the claimant reapplied for benefits again in July 2012, the employer protested the claim. A decision was issued on July 18, 2012, that stated a decision had been made on the claimant's separation from work in a previous benefit year and remained in effect. The employer filed a written appeal from that decision on July 24, 2012.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer filed a timely appeal from the decision issued on August 1, 2012.

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.

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, 377 (Iowa 1979). In this case, the employer appealed the separation decision after the deadline for appealing expired. The fact that Joe Rausenberger did not personally see the decision would not prove that the employer did not receive the decision. The facts in this case are similar to the Beardslee case. In the Beardslee case, the claimant responded when asked if she received the disqualification decision that she did not know, she did not recall, and then she did not think so. The court decided that there was no credible evidence of nonreceipt of the decision and she could not obtain review of the decision by appealing a later overpayment decision that was based on the disqualification. Likewise, Joe Rausenberger's testimony that he did not receive the decision granting benefits is not sufficient to show **the employer** did not receive the decision and the employer does not get a second chance to appeal the decision because the claimant filed for a second benefit year.

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 August 1, 2011, reference 01, is affirmed. The appeal in this case was not timely, and the unemployment insurance decision stating the claimant is qualified for benefits remains in effect.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs