

BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319

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ROBIN M LYNN

Claimant,

and

SHENANDOAH COMMUNITY SCHOOL  
DIST

Employer.

HEARING NUMBER: 08B-UI-06862

EMPLOYMENT APPEAL BOARD  
DECISION

**NOTICE**

**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: 96.4-5**

**DECISION**

**UNEMPLOYMENT BENEFITS ARE DENIED**

The Employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

**FINDINGS OF FACT:**

The decision of the claims representative was mailed to the Claimant's last known address on July 17, 2008. (Ex. A). That decision stated that it became final unless an appeal was postmarked by July 27, 2008. (Ex. A). That day was a Sunday so the appeal was due on Monday July 28, 2008. The Claimant received the decision on July 24, 2008. (Ex. A). The Claimant was out of town at that time. (Ex. A). The Claimant returned to town on Sunday, July 27. (Tran at p. 4). The Claimant signed the appeal and faxed it on Tuesday, July 29 which was one day late. (Ex. D-1).

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code 96.6 provides:

2. *Initial determination.* ... Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive - but not conclusive - evidence of the date of mailing.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge and this Board have no authority to change the decision of representative if a timely appeal is not filed. Franklin v. Iowa Dept. Job Service, 277 N.W.2d 877, 881 (Iowa 1979). The ten day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. 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). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. E.g. Beardslee v. Iowa Dept. Job Service, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. Hendren v. Iowa Employment Sec. Commission, 217 N.W.2d 255 (Iowa 1974); Smith v. Iowa Employment Sec. Commission, 212 N.W.2d 471 (Iowa 1973). The question of whether the Employer has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which 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."

These principles govern this matter - not the good cause rule which applies to late appeals to the Board. C.f. Houlihan v. Employment Appeal Bd., 545 N.W.2d 863 (Iowa 1996)(15 day appeal deadline to Board extended for good cause under Board rule 3.1). The rules of Iowa Workforce Development do not give this Board the flexibility to extend the deadline for good cause. There is no indication that the delay in this case was caused by an error of Workforce or by the postal service. Since the requirements of rule 24.35(2) are not satisfied the Board is obliged to apply the ten day period and to reverse the administrative law judge.

This conclusion is bolstered by the fact that the Claimant's excuse of being out of town does not even strike us as satisfying good cause. People sometimes take vacations, people sometimes travel on business, and employers sometimes take furloughs. We expect such persons to make some sensible arrangement for handling of important mail while they are out. The absence is known in advance and for a predictable period of time. Arrangements to at least look for important mail can also be made in advance. If, for example, an over-the-road trucker can arrange to have a neighbor get his mail the Claimant can make similar arrangements. Moreover the Claimant was home on Sunday and did not file

her appeal until Tuesday. A fax received prior to midnight on the 28<sup>th</sup> would have been timely. 871 IAC 26.4(5). A letter postmarked that day would have been timely. Thus even if we were to apply a good cause standard, rather than the stricter jurisdictional one, still we would find the protest untimely.

We recognize that according to the Claims Representative decision the Claimant has adequate wage credits from noneducational employers to collect benefits. The Employer's account, however, should not be charged for benefits paid for weeks claimed between successive years or terms. In accordance with this, benefits based on wages earned from the Employer from 01/01/08 and 06/15/2008 will be removed from the claim. We remand this matter to Iowa Workforce, Claims Department for the necessary adjustments and to determine if an overpayment results.

**DECISION:**

The administrative law judge's decision dated August 12, 2008 is **REVERSED**. The Employment Appeal Board concludes that the appeal to the Administrative Law Judge was untimely and that, as a result, there was no jurisdiction to entertain the Claimant's appeal. The decision of the claims representative made on July 17, 2008 is therefore affirmed. Accordingly, the Claimant is allowed benefits only on the conditions set forth in the claims representative decision, namely, based on earnings from other noneducational employers. This matter is remanded to Iowa Workforce Development, claims section, to make the necessary adjustments and to calculate what, if any, overpayment results.

A portion of the Employer's appeal to the Employment Appeal Board consisted of additional evidence which was not contained in the administrative file and which was not submitted to the administrative law judge. While the appeal and additional evidence (statement) were reviewed, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision.

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John A. Peno

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Elizabeth L. Seiser

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Monique F. Kuester

RRA/fnv