

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
6200 Park Avenue, Suite 100  
Des Moines, Iowa 50321-1270  
eab.iowa.gov**

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**RICHARD D KYLE**

Claimant

and

**MID IOWA TOWING LLC**

Employer

: **APPEAL NUMBER: 24B-UI-03995**  
: **ALJ HEARING NUMBER: 24A-UI-03995**  
:  
: **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: 17A.12-3 26.14-7**

**DECISION**

**UNEMPLOYMENT BENEFITS ARE DENIED**

The Claimant appealed this case to the Employment Appeal Board. The parties were notified that timeliness of the appeal was at issue. The members of the Employment Appeal Board reviewed the entire record.

**FINDINGS OF FACT:**

The decision of the administrative law judge was dated and mailed on May 7, 2024. The Claimant appealed the decision of the administrative law judge to the Employment Appeal Board on July 7, 2024. Good cause for the late filing was not shown. The appeal was not filed in a timely manner.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code Section 96.6(3) (2024) provides:

The parties shall be duly notified of the administrative law judge's decision, together with the administrative law judge's reasons for the decision, which is the final decision of the department, unless within fifteen days after the date of the notification or mailing of such decision, further appeal is initiated pursuant to this section.

Section 486 IAC 3.1(2) of the Iowa Administrative Code provides:

Form and time of appeal. A party aggrieved by a decision of an administrative law judge may appeal to the employment appeal board within 15 days from the date of the decision. The appeal shall state the grounds for the appeal. If sent by mail or courier, the appeal shall be addressed to Employment Appeal Board, Lucas State Office Building, Fourth Floor, 321 East 12th Street, Des Moines, Iowa 50319. The appeal may also be filed in any office maintained by the workforce development department which processes claims for unemployment insurance. Appeals may also be filed by facsimile transmission (fax). If the appeal is filed by fax, the original copy shall be mailed to the employment appeal board at the above address. The date of the appeal is the date of the fax transmission. Appeals may also be filed online by completing and submitting an online appeal form available on the Iowa workforce development Web site.

According to 871 IAC 24.35(1), if a United States Postal Service postmark is present that postmark will be used as the filing date of the appeal. If there is no postmark, a postal meter mark will be used to establish the filing date. If neither is available the date of the appeal is the date the appeal was written. The definition for “filing date” in rule 486 IAC 2.2 is almost identical.

This rule has been construed in *Pepsi Cola v. Employment Appeal Board*, 465 N.W.2d 674 (Iowa App. 1990). The court stated that the United States Postal Service postmark is governing when both a meter mark and postmark are present on the envelope.

The Claimant did not file a timely appeal to the Employment Appeal Board. The Employment Appeal Board is without jurisdiction to review the merits of the case. *Franklin v. Iowa Department of Job Service*, 277 N.W.2d 877 (Iowa 1979).

The Employment Appeal Board rule at 486 IAC 3.1(16) provides a late appeal shall be dismissed unless good cause for the delay in filing is shown. Good cause was not shown in this case.

#### **NOTE TO THE CLAIMANT:**

The Claimant’s appeal to us appears to be an inquiry about his original appeal to the Administrative Law Judge. He appealed to the Administrative Law Judge back in April, and his appeal was set up by Iowa Workforce. A notice of hearing was sent to “2906 State Ave, Des Moines IA.” This is the address used by the Claimant in his appeal in April and in his inquiry in July. The Administrative Law Judge issued a decision finding the Claimant in default because he did not appear at the hearing. That decision of the Administrative Law Judge was made on May 7, 2024 and explained that the appeal to us would be due on May 22, 2024. The Claimant did not send in an inquiry until July. Iowa Workforce forwarded this inquiry to us (we are a separate agency) to accept as an appeal. It is late, and so we dismiss the appeal.

We are writing further explanation, however, because the file indicates that perhaps there is a mail problem going on here. We have only deduction, however, and no actual information as the Claimant seems unaware that there were things mailed to him by Iowa Workforce. Thus we dismiss the appeal. **But** the Claimant can apply for rehearing. The Claimant is encouraged to supply the missing detail about any possible mail issues, and to provide any supporting documents, by applying for rehearing within 20 days of today’s decision. **If he fails to request rehearing within 20 days our decision will become final.**

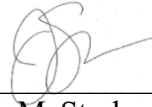
The Administrative Law Judge decision is online at:

<http://uidecisions.iowaworkforcedevelopment.gov/decision/webapi/decision?f=6c349a84-433e-41a0-8c44-5e303e775794>

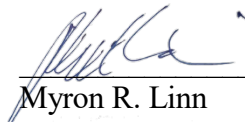
We have emailed this decision to the email address Claimant supplied in the appeal.

**DECISION:**

The Employment Appeal Board lacks jurisdiction to rule on the merits of the appeal. The administrative law judge's decision dated May 7, 2024 is final.



James M. Strohman



Myron R. Linn



Ashley R. Koopmans

RRA/mes

**DATED AND MAILED JULY 26, 2024**