

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONNA K SMITH
Claimant

APPEAL NO. 08A-UI-01221-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN SIDING & WINDOW SYS INC
Employer

OC: 12/17/06 R: 02
Claimant: Respondent (1)

Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

American Siding and Window Systems, Inc., filed an appeal from a representative's decision dated April 12, 2007, reference 02, which held the claimant eligible for unemployment insurance benefits. After due notice was issued, a telephone conference hearing was scheduled for and held on February 19, 2008. The claimant participated. The employer participated by Deb Ritter, accounting/human resource manager.

ISSUE:

The issue in this matter is whether the appeal was filed timely.

FINDINGS OF FACT:

The administrative law judge, having considered all the evidence in the record, finds: A disqualification decision was mailed to the employer's last-known address of record on April 12, 2007. The employer received the decision. The decision contained a warning that the appeal must be postmarked or received by the Appeal Section by April 22, 2007. The appeal was not filed until February 5, 2008, which is after the date noticed on the decision. The decision was received by the employer but, for reasons unknown, an appeal was not filed timely.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6-2 provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The

claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The ten days for an appeal begins running on the mailing date. The quote "decision date" found in the upper right hand portion of the representative's decision is presumptive evidence of the date of mailing. The evidence in the record establishes that the decision was received by the employer but, for reasons unknown, employees of the company did not file a timely appeal.

Pursuant to 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked if mailed.

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date the appeal was filed. The Supreme Court of Iowa has declared that there is a mandatory duty to file appeals from a representative's decision within the time allotted by statute. The administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. Franklin v. Iowa Department of Job Service, 277 N.W.2d 877, 881 (Iowa 1979).

The administrative law judge concludes that the failure to file a timely appeal within the time period prescribed by the Iowa employment security law was not due to any agency error or misinformation or delay or other action of the United States Postal Service. The administrative law judge thus concludes that jurisdiction lacks to make a determination with respect to the nature of the appeal.

DECISION:

The representative's decision dated April 12, 2007, reference 02, is hereby affirmed. The appeal in this case was not timely and the decision of the representative remains in effect.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw