

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JERYL A LAFFOON
Claimant

APPEAL NO: 06A-UI-08550-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAREAGE OF NEWTON LLC
Employer

**OC: 03/19/06 R: 02
Claimant: Respondent (1)**

Section 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated August 14, 2006, reference 03, that concluded the employer's protest was untimely. A telephone hearing was held on September 11, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. Andrea Kepple participated in the hearing on behalf of the employer with a witness, Sherry Loder.

ISSUE:

Was the appeal in this case filed timely?

FINDINGS OF FACT:

An unemployment insurance decision was mailed to the employer's last-known address of record on August 14, 2006. The decision concluded the employer's protest was untimely and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by August 24, 2006.

The employer received the decision within the ten-day period for appealing the decision. The employer filed a written appeal on August 25, 2006, which is after the time period for appealing had expired. The employer delayed in filing its appeal because the director of human resources was out of the office until after the time for appealing had expired.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer filed a timely appeal.

Iowa Code section 96.6-2 provides in pertinent part:

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. . . . 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 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 (Iowa 1979). In this case, the employer's appeal was filed after the deadline for appealing expired.

The next question is whether the employer had a reasonable opportunity to file an appeal in a timely fashion. Hendren v. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC, 212 N.W.2d 471, 472 (Iowa 1973). The employer filed its appeal late because the human resources director was out of the office until the day after the appeal deadline. The employer had a reasonable opportunity to file a timely appeal.

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 14, 2006, reference 03, is affirmed. The appeal in this case was not timely, and the unemployment insurance decision holding the claimant qualified for benefits remains in effect.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs