

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

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**ROBBIE L CANADA**

Claimant,

and

**CITY OF DES MOINES PAYROLL DEPT-  
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Employer.

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**HEARING NUMBER: 14B-UI-05102**

**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: 96.5-2-A, 96.6-2**

**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. A majority of the Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The majority of the Employment Appeal Board **REVERSES** as set forth below.

**FINDINGS OF FACT:**

A disqualification decision was mailed to claimant's last-known address of record on May 1, 2014. She did receive the decision sometime before May 5. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by Sunday, May 11, 2014. The claimant could file a timely appeal on Monday, May 12, 2014. The claimant did not file a timely appeal. On May 9, 2014, the claimant arrived home from Kansas City, Missouri, where she was visiting her significant other's daughter who was hospitalized from a reaction to a heart transplant. After being home for two hours, she returned to Kansas City, Missouri, when she learned the girl took a turn for the worse. The claimant returned home to Des Moines, Iowa, again on May 14, 2014, when the girl died. The appeal was not filed until May 14, 2014, which is after the date noticed on the disqualification.

## 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 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).

Rule 871-24.35(2) 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. We note that while the Appeals section issues about 15 to 20 thousand decisions a year, which in turn can be appealed to the board, the claims bureau issues around sixty thousand appealable non-monetary decisions in a year. No doubt this is part of the reason why Workforce does not employ a good cause standard. Here 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 is unfortunate as we are obliged to follow Workforce's rules.

## DECISION:

The administrative law judge's decision dated July 15, 2014 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. Accordingly, she is denied benefits until such time the Claimant has worked in and was paid wages for insured work equal to ten times the Claimant's weekly benefit amount, provided the Claimant is otherwise eligible. See, Iowa Code section 96.5(1)(g); Iowa Code section 96.5(2)"a".

The Board remands this matter to the Iowa Workforce Development Center, Claims Section, for a calculation of the overpayment amount based on this decision.

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Kim D. Schmett

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John M. Priester

**DISSENTING OPINION OF ASHLEY R. KOOPMANS:**

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety.

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Ashley R. Koopmans

RRA/fnv