

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

NICHOLAS WEIDENBACHER
LOT 15
14907 HWY 20
PEOSTA IA 52068

IOWA CATHOLIC CONFERENCE
ATTN MARGI PRICKETT
530-42ND ST
DES MOINES IA 50312

Appeal Number: 05A-UI-00109-AT
OC: 06-06-04 R: 04
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.6-2 – Timely Appeal

STATEMENT OF THE CASE:

Nicholas Weidenbacher filed an appeal from an unemployment insurance decision dated December 8, 2004, reference 02, which denied benefits to him. After due notice was issued, a telephone hearing was held January 20, 2005 with Mr. Weidenbacher participating. Paul Janke appeared on behalf of the Iowa Catholic Conference. Roger Slattery was available to testify but was not called. Exhibit D-1 was admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: The decision from which Nicholas Weidenbacher has

appealed states that it would become final unless an appeal was postmarked by December 18, 2004 or received by the Agency by that date. Since December 18, 2004 was a Saturday, state law automatically extended the appeal period to the following Monday, December 20, 2004. Mr. Weidenbacher received the decision but did not file an appeal until December 29, 2004.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the administrative law judge has jurisdiction to rule on the merits of this case. He does not. Iowa Code section 96.6-2 gives parties ten days from the date of a fact-finding decision to file an appeal. The Supreme Court of Iowa has ruled that the time limit in the statute is a jurisdictional requirement. See Franklin v. Iowa Department of Job Service, 277 N.W.2d 877, 881 (Iowa 1979). In the absence of a timely appeal, the administrative law judge has no legal authority to review a fact-finding decision, even if he disagrees with it. The timeliness of an appeal filed via the U. S. Postal Service is determined by examining the postmark date on the envelope. See Pepsi-Cola Bottling Company of Cedar Rapids v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

The evidence in this record establishes that Mr. Weidenbacher could have filed a timely appeal but did not do so. The administrative law judge, therefore, has no authority to review the merits of the case.

DECISION:

The unemployment insurance decision dated December 8, 2004, reference 02, has become final and remains in effect. The claimant is not eligible for unemployment insurance benefits.

pjs/b