

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

PEGGY J DANIELSON
601 W MONTGOMERY
KNOXVILLE IA 50138

FIRST CHOICE HEATING & COOLING
PLUMBING & ELECTRIC LTD
P O BOX 443
ALTOONA IA 50009

Appeal Number: 04A-UI-06458-CT
OC: 05/02/04 R: 02
Claimant: Respondent (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 - Timeliness of Appeal

STATEMENT OF THE CASE:

First Choice Heating & Cooling filed an appeal from a representative's decision dated May 26, 2004, reference 01, which held that no disqualification would be imposed regarding Peggy Danielson's separation from employment. After due notice was issued, a hearing was held by telephone on July 21, 2004. Ms. Danielson participated personally. The employer participated by Steve Creger, President, and Jeff Cain, Service Technician. The hearing record was left

open to receive a copy of the representative's decision that had been sent to the employer. The document was received on July 22, 2004.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: A decision allowing benefits to Ms. Danielson was mailed to the employer's last known address of record on May 26, 2004. The employer received the decision on May 28, 2004. The file copy of the decision contained a warning that an appeal must be postmarked or received by the Appeals Section by June 5, 2004. The decision that was sent to the employer appears to have been incorrectly printed. It appears that the bottom of a different decision was printed with the top portion of the decision pertaining to Ms. Danielson. The appeal deadline noted on the copy received by the employer is June 8, 2004. The reverse side of the decision indicates that an appeal had to be filed within ten days. The appeal was not filed until June 10, 2004, which is after the date noticed on the disqualification decision.

REASONING AND CONCLUSIONS OF LAW:

REF 22

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. Gaskins v. Unempl. Comp. Bd. of Rev., 429 A.2d 138 (Pa. Comm. 1981); Johnson v. Board of Adjustment, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983).

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

1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. Beardslee v. IDJS, 276 N.W.2d 373, 377 (Iowa 1979); see also In re Appeal of Elliott 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert 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 record shows that the appellant did have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes that failure to file a timely appeal within the time 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 pursuant to 871 IAC 24.35(2). In determining the timeliness of the appeal in this case, the administrative law judge has relied on the deadline found on the decision mailed to the employer, June 8, 2004, rather than the date which appears on the file copy, June 5, 2004. The instructions found on the reverse of the decision warn the parties that they have ten days in which to appeal. The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code Section 96.6-2, and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979) and Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The decision of the representative dated May 26, 2004, reference 01, is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect. Benefits are allowed, provided Ms. Danielson satisfies all other conditions of eligibility.

cfc/