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

CHARLES J BLASZCZYK
3130 ROCKINGHAM ROAD
DAVENPORT IA 52804

TITAN WHEEL CORPORATION OF IOWA
2701 SPRUCE ST
QUINCY IL 62301

Appeal Number: 04A-UI-03290-BT
OC: 08/17/03   R: 04
Claimant: Respondent   (2)

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
Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Titan Wheel Corporation of Iowa (employer) appealed an unemployment insurance decision dated September 17, 2003, reference 01, which held that Charles Blaszczyk (claimant) was not eligible for unemployment insurance benefits because he was discharged for work-connected misconduct. Due notice was issued scheduling the matter for a telephone hearing to be held April 16, 2004. The timeliness of the appeal is also at issue and will be addressed in the decision. Because a decision fully favorable to the parties could be made based on the record as it stood, a hearing was deemed unnecessary.

FINDINGS OF FACT:

The administrative law judge, having reviewed and considered the evidence in the record, finds that: A disqualification decision was mailed to the parties' last known addresses of record on September 17, 2003. The parties received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by September 27, 2004. The appeal was not filed until March 24, 2004, which is after the date noticed on the disqualification decision.

The claimant did not file an appeal based on information given to him by the employer. The employer filed an appeal when it discovered it had made an error with regard to the claimant's discharge. His discharge was in error and the employer is no longer protesting the claimant's unemployment insurance benefits.

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 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 claimant did not have a reasonable opportunity to file a timely appeal based on misinformation provided to him by the employer. Likewise, the employer failed to file an earlier appeal based on its own error that was unknown at the time. However, once the employer realized its error, a timely appeal was filed.

The administrative law judge concludes that the appeal was timely filed pursuant to Iowa Code Section 96.6-2, and the administrative law judge has 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).

The next issue to be determined is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The employer now confirms the claimant was discharged in error. Since the claimant was not discharged for misconduct, he is qualified for benefits, provided he is otherwise eligible.

DECISION:

The appeal is found timely and the unemployment insurance decision dated September 17, 2003, reference 01, is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

sdb/kjf