

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CORY L FROST
Claimant

APPEAL NO. 11A-UI-12077-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

RENOVATIONS INC
Employer

OC: 11/30/08
Claimant: Appellant (1)

Section 96.19-18b(1) – Localization of Employment
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated February 1, 2010, reference 01, which held that wages paid to the claimant between July 1, 2007, and December 5, 2008, were not reportable to the state of Iowa and could not be added to the claimant's claim for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on October 26, 2011. Claimant participated. Employer failed to respond to the hearing notice and did not participate. The record consists of the testimony of Cory Frost. Official notice is taken of agency records.

ISSUES:

Whether the claimant filed a timely appeal; and
Whether the claimant's wages were reportable in Iowa.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

On February 1, 2010, a representative issued a decision that held that the claimant was ineligible for unemployment insurance benefits in Iowa because the wages that formed the basis of that claim were not reportable in Iowa. The decision also states that the decision would become final unless an appeal was postmarked by February 11, 2010, or received by the Appeals Section on that date. The claimant's appeal was filed on September 12, 2011. The claimant did not receive a copy of this decision.

The claimant worked for this employer fixing concrete. He lives in Wisconsin and the work was all performed in Wisconsin.

REASONING AND CONCLUSIONS OF LAW:

The preliminary issue in this case is whether the claimant timely appealed the representative's decision. Iowa Code § 96.6-2 provides that unless the affected party (here, the claimant) files an appeal from the decision within ten calendar days, the decision is final and benefits shall be paid or denied as set out by 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. 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 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 claimant testified that he did not receive a copy of the representative's decision. The administrative law judge accepts this testimony and will deem the appeal to be timely.

The next issue is whether the claimant's wages were reportable in the state of Iowa.

Iowa Code § 96.19-18 "Employment" provides:

b. The term employment shall include an individual's entire service, performed within or both within and without this state, if:

(1) The service is localized in this state, or

(2) The service is not localized in this state but some of the service is performed in this state and (i) the base of operations.

The claimant's request to have wages he earned in Wisconsin added to his Iowa wage records is denied pursuant to 871 IAC 23.24 and Iowa Code § 96.19-18b. Since the claimant performed his work in Wisconsin and his taxable wages were reported in Wisconsin, those wages cannot be used for an Iowa unemployment insurance claim.

DECISION:

The decision of the representative dated February 1, 2010, reference 01, is affirmed. The claimant is not eligible for Iowa unemployment insurance benefits on an Iowa claim dated November 30, 2008, because the claimant's wages were not reportable in Iowa.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs