

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

TERI R CHAPMAN

Claimant,

and

IOWA WORKFORCE

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HEARING NUMBER: 13B-UI-15261

**EMPLOYMENT APPEAL BOARD
DECISION**

N O T I C E

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: 96.4-3

D E C I S I O N

The claimant appealed this case to the Employment Appeal Board. The parties were notified that timeliness of the appeal was at issue. The members of the Employment Appeal Board reviewed the entire record.

FINDINGS OF FACT:

The decision of the administrative law judge was dated and mailed on March 6, 2013. The claimant appealed the decision of the administrative law judge to the Employment Appeal Board in a letter dated March 18, 2013 that was faxed on the same date. The appeal letter was not signed, which prompted the agency to send a letter requesting the claimant's signature on the appeal in order for it to be considered a valid appeal. That letter was dated March 20th and indicated that the claimant had ten days from that date to submit a signed appeal (March 30th, however, since this date fell on Saturday, new deadline became April 1, 2013). The claimant submitted a signed copy of her appeal on April 16, 2013, fifteen days beyond the new deadline. The appeal was not filed in a timely manner.

REASONING AND CONCLUSIONS OF LAW:

Section 486 IAC 2.2 of the Iowa Administrative Code provides:

Appeal" means any instrument used to notify the employment appeal board that the individual wishes to appeal a decision of an administrative law judge. ***The instrument must be in writing and signed by the individual*** or an authorized representative. If the instrument is signed by an authorized representative, the person or party filing the appeal must be designated in the document. (*Emphasis added.*)

Iowa Code Section 96.6(3) (1999) provides:

The parties shall be duly notified of the administrative law judge's decision, together with the administrative law judge's reasons for the decision, which is the final decision of the department, unless within fifteen days after the date of the notification or mailing of such decision, further appeal is initiated pursuant to this section.

Section 486 IAC 3.1(2) of the Iowa Administrative Code provides:

Form and time of appeal. A party aggrieved by a decision of the administrative law judge may appeal to the Employment Appeal Board within 15 days from the date of the decision. The appeal shall state the grounds for appeal. The appeal shall be addressed to Employment Appeal Board, Lucas State Office Building, Fourth Floor, Des Moines, Iowa 50319. The appeal may also be filed at any office maintained by the workforce development department which processes claims for unemployment insurance. Appeals may also be filed by facsimile transmission (fax). If the appeal is filed by fax, the original copy shall be mailed to the employment appeal board. The date of the appeal is the date of the fax transmission.

According to 871 IAC 24.35(1), if a United States Postal Service postmark is present that postmark will be used as the filing date of the appeal. If there is no postmark, a postal meter mark will be used to establish the filing date. If neither is available the date of the appeal is the date the appeal was written.

This rule has been construed in Pepsi Cola v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990). The court stated that the United States Postal Service postmark is governing when both a meter mark and postmark are present on the envelope.

The claimant, initially, filed an unsigned appeal, which was deemed invalid according to Iowa law. The agency subsequently directed the claimant to submit a signed copy in order to validate her appeal, which the claimant failed to do in the time specified. Because the 'later' signed appeal was filed 15 days beyond the grace period allowed, the Board cannot consider this appeal timely. The Employment Appeal Board therefore lacks jurisdiction to review the merits of the case. Franklin v. Iowa Department of Job Service, 277 N.W.2d 877 (Iowa 1979).

The Employment Appeal Board rule at 486 IAC 3.1(16) provides a late appeal shall be dismissed unless good cause for the delay in filing is shown. Good cause was not shown in this case.

DECISION:

The Employment Appeal Board lacks jurisdiction to rule on the merits of the appeal. The administrative law judge's decision dated March 6, 2013, which denied benefits, is final.

John A. Peno

Monique F. Kuester

Cloyd (Robby) Robinson

AMG/fnv