

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

TAMI L FARRELL  
1218 – 14<sup>TH</sup> ST  
SIOUX CITY IA 51105

PECH OPTICAL CORPORATION  
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Appeal Number: 04A-UI-05619-AT  
OC: 04-11-04 R: 01  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.6-2 – Timely Appeal

STATEMENT OF THE CASE:

Pech Optical Corporation filed an appeal from an unemployment insurance decision dated April 29, 2004, reference 01, which allowed benefits to Tami L. Farrell. After due notice was issued, a telephone hearing was held June 11, 2004 with Ms. Farrell participating and being represented by Dennis McElwain, Attorney at Law. Accounting and Human Resources Manager Karen Lindberg participated for the employer. Exhibit D-1, the appeal letter and envelope, were admitted into evidence.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The decision from which Pech Optical Corporation has appealed states that it would become final unless an appeal was postmarked by May 9, 2004 or received by the Agency by that date. Since May 9, 2004 was a Sunday, state law automatically gave the employer until May 10, 2004 to perfect an appeal. The appeal was filed by mail, the envelope receiving a postmark on May 17, 2004. Before filing the appeal, Accounting and Human Resources Manager Karen Lindberg had called Iowa Workforce Development Deputy Director Jane Bartow with questions about the law relating to unemployment insurance benefits for individuals discharged because of attendance violations. While waiting for a response, Ms. Lindberg set the decision aside and neglected to file an appeal on or before May 10, 2004. Ms. Lindberg knew that her telephone call to the deputy director did not perfect an appeal.

#### 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 an individual ten days from the date of a fact-finding decision to file an appeal. State law provides for an automatic extension to the next regular business day if the final day for appeal falls on a Saturday, Sunday or other legal holiday. The Supreme Court of Iowa has ruled that the time limit in the statute is jurisdictional. 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 jurisdiction to rule on the merits of the case.

The evidence in this record establishes that the employer had received the adverse decision soon enough to file an appeal on or before May 10, 2004. The evidence establishes that Ms. Lindberg did not believe that her phone call to Deputy Director Bartow constituted a bona fide appeal, and it establishes that no one at Workforce Development gave express or implicit approval of an extension. Under these circumstances the administrative law judge concludes that he has no jurisdiction to rule on the merits of this case.

The following is dicta, an explanation of the principles of law involved in determining the unemployment insurance consequences in cases involving separations because of attendance violations. The Supreme Court of Iowa has ruled that excessive unexcused absenteeism, a concept which includes tardiness in the Court's analysis, is misconduct. See, for example, Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Absence due to matters of personal responsibility such as transportation and matters of personal business are unexcused (unless the employer has chosen to excuse the absence) regardless of notification. The Court has noted, however, that people do not choose to be ill. It is part of the human condition. The Court has concluded that absence due to illness, properly reported to the employer in accordance with the employer's policy, cannot be held against an individual for unemployment insurance purposes. In unemployment insurance adjudications, neither the Agency nor the administrative law judge expresses an opinion as to whether the employer should have discharged an individual. It determines only if the separation was an event which disqualifies an individual for unemployment insurance purposes. An employer's attendance policy will be given due weight when determining if an employee has properly notified the employer of an absence due to illness. The employer's policy cannot take priority, however, over legal precedent established by Supreme Court decision or statute.

DECISION:

The unemployment insurance decision dated April 29, 2004, reference 01, has become final and remains in effect. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

tjc/tjc