

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI	
MARC W FERRIS Claimant DOLGENCORP INC Employer	APPEAL NO: 07A-UI-03220-DWT ADMINISTRATIVE LAW JUDGE DECISION OC: 07/02/06 R: 01 Claimant: Respondent (1)

Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Dolgencorp, Inc. (employer) appealed a representative's February 28, 2007 decision (reference 03) that concluded Marc W. Ferris (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 16, 2007. The claimant participated in the hearing. David Johnson, the district manger, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer file a timely appeal or establish a legal excuse for filing a late appeal?

FINDINGS OF FACT:

The claimant reopened his claim for benefits during the week of February 7, 2007. A notice of claim was mailed to the employer on February 8, 2007. The notice of claim was mailed to the employer at a Tennessee address. The employer filed a timely protest. As a result of the employer's protest, a fact-finding interview was held. On February 28, 2007, a representative issued a decision that concluded the claimant had been discharged for nondisqualifying reasons. The employer's decision was again mailed to the Tennessee address, the address of record.

The employer faxed an appeal on March 29, 2007. The employer then provided another mailing address. This address was located in Louisville, Kentucky.

Even though the hearing notice informed the parties that timeliness of appeal was an issue for the hearing, the employer did not have any witness at the hearing who knew when the employer received the hearing notice or knew anything about filing the appeal.

REASONING AND CONCLUSIONS OF LAW:

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's decision is mailed to the parties' last-known address, files an appeal from the decision, the decision is final. Benefits shall then be paid or denied in accordance with the representative's decision. Iowa Code section 96.6-2. 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 Iowa Supreme Court has ruled that appeals from unemployment insurance decisions must be filed within the time limit set by statute and the administrative law judge has no authority to review a decision if a timely appeal is not filed. Franklin v. IDJS, 277 N.W.2d 877, 881 (Iowa 1979); Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979). In this case, the employer's appeal was filed after the March 10, 2007 deadline for appealing expired.

The next question is whether the employer had a reasonable opportunity to file 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). It is not known when the employer received notice of the representative's February 28 decision. It is not even known why the employer changed the mailing address on the representative's decision and did not do this when the employer protested on February 20.

The employer's failure to file a timely appeal was not due to any Agency error or misinformation or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) would excuse the delay in filing an appeal. Since the employer did not establish a legal excuse for filing a late appeal, the Appeals Section has no legal jurisdiction to make a decision on the merits of the appeal. This means the February 28 decision is affirmed.

The employer is not a base period employer at this time. Therefore, the employer's account will not be charged during the claimant's current benefit year.

DECISION:

The representative's February 28, 2007 decision (reference 03) is affirmed. The employer did not file a timely appeal or establish a legal excuse for filing a late appeal. The Appeals Section has no jurisdiction to address the merits of the appeal. This means the claimant remains qualified to receive unemployment insurance benefits as of February 4, 2007, provided he meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs