

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT M HOWELL
Claimant

APPEAL NO. 07A-UI-01949-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WINEGARD COMPANY
Employer

**OC: 09/03/06 R: 04
Claimant: Appellant (1)**

Section 96.6(2) – Timeliness
Section 96.3(5) – Business Closing

STATEMENT OF THE CASE:

The claimant, Robert Howell, filed an appeal from a decision dated February 9, 2007, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on March 13, 2007. The claimant participated on his own behalf. The employer, Winegard Company, did not provide a telephone number where a representative could be contacted and did not participate. Exhibit D-1 was admitted into the record.

ISSUE:

The issue is whether the appeal is timely and whether the claimant was laid off due to a business closing.

FINDINGS OF FACT:

Robert Howell filed a claim for unemployment benefits with an effective date of September 3, 2006. Due to some confusion on his part he checked the box indicating he had been laid off due to a business closing. Mr. Howell drew benefits through the week ending December 2, 2006, when he moved out of state to take other employment. He did not notify Iowa Workforce Development of his change in address.

The decision in the present case was issued on February 9, 2007, and sent to his address of record. Because the address was no longer current, the decision was not received by him until February 20, 2007, the day after it was due. He filed an appeal on February 24, 2007.

Mr. Howell does not dispute that the employer from which he was laid off did not go out of business. It was an error on his part when he checked an incorrect box.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6-2 provides in pertinent part:

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. . . . 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.

The claimant filed an appeal within four days of receiving the decision. It was delayed due to his failure to notify Iowa Workforce Development of a change in address, which he did not deem necessary since he was no longer drawing benefits. The appeal shall be accepted as timely.

Iowa Code section 96.3-5 provides:

5. Duration of benefits. The maximum total amount of benefits payable to an eligible individual during a benefit year shall not exceed the total of the wage credits accrued to the individual's account during the individual's base period, or twenty-six times the individual's weekly benefit amount, whichever is the lesser. The director shall maintain a separate account for each individual who earns wages in insured work. The director shall compute wage credits for each individual by crediting the individual's account with one-third of the wages for insured work paid to the individual during the individual's base period. However, the director shall recompute wage credits for an individual who is laid off due to the individual's employer going out of business at the factory, establishment, or other premises at which the individual was last employed, by crediting the individual's account with one-half, instead of one-third, of the wages for insured work paid to the individual during the individual's base period. Benefits paid to an eligible individual shall be charged against the base period wage credits in the individual's account which have not been previously charged, in the inverse chronological order as the wages on which the wage credits are based were paid. However if the state "off indicator" is in effect and if the individual is laid off due to the individual's employer going out of business at the factory, establishment, or other premises at which the individual was last employed, the maximum benefits payable shall be extended to thirty-nine times the individual's weekly benefit amount, but not to exceed the total of the wage credits accrued to the individual's account.

The employer from which the claimant was laid off did not go out of business. The issue arose only because of a mistake made when filling out the claim for benefits.

DECISION:

The representative's decision of February 9, 2007, reference 01, is affirmed. Robert Howell was not laid off due to a business closing and the claim shall not be redetermined.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs