

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARLES L DOLES
Claimant

APPEAL NO. 10A-UI-15261-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TRADESMEN INTERNATIONAL INC
Employer

OC: 03/28/10
Claimant: Respondent (1-R)

Section 96.6-2 – Untimely Protest
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated September 29, 2010, reference 02, that concluded the employer's protest was untimely. A telephone hearing was held on December 17, 2010. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Scott Crim participated in the hearing on behalf of the employer. Exhibit A-1 was admitted into evidence at the hearing.

ISSUE:

Was the appeal in this case filed timely?

FINDINGS OF FACT:

An unemployment insurance decision was mailed to the employer's last-known address of record on September 29, 2010. The decision concluded the employer's protest was untimely and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by October 9, 2010.

The employer received the decision within the ten-day period for appealing the decision. It filed a written appeal on November 4, 2010, which is after the time for appealing had expired. The reason the employer delayed in filing its appeal is unknown.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer filed a timely appeal.

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last-known address. Iowa Code section 96.6-2.

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 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). There is no evidence that the employer did not have a reasonable opportunity to file a timely appeal.

The 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 appeal was not filed timely, there is no jurisdiction to make a decision on the merits of the appeal.

Information was presented at the hearing that the claimant worked on May 11 and 12 and earned \$130.00 for that work. The department records show the claimant filed for benefits for the week ending May 15, but reported no wages for the week. The issue of whether the claimant failed to report work and earnings is remanded to the Agency to investigate and make a determination. The employer also raised an issue about a work refusal on August 19, 2010, which also should be adjudicated.

DECISION:

The unemployment insurance decision dated September 29, 2010, reference 02, is affirmed. The appeal in this case was not timely, and the unemployment insurance holding the claimant qualified for benefits remains in effect. The issue of whether the claimant failed to report work and earnings for the week ending May 15, 2010, is remanded to the Agency to investigate and make a determination. The issue of whether the failed to accept an offer of suitable work made on August 19, 2010, is also remanded to the Agency to investigate and make a determination.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs