

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KYLE D SCHMITT
Claimant

APPEAL NO. 08A-UI-07515-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIDWEST ACADEMY LLC
Employer

**OC: 05/25/08 R: 04
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Kyle Schmitt filed an appeal from the July 9, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on September 3, 2008. The claimant did participate. The employer participated through Tiffany Hendrikson, Hearing Representative and witness, Katie Tompson.

ISSUE:

The issue is whether the claimant's appeal was timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The disqualification was mailed to the claimant's last-known address of record on July 9, 2008. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by July 19, 2008. The appeal was not filed until August 21, 2008, which is after the date noticed on the disqualification decision. Mr. Schmitt moved from his address of record at an unspecified date and did not change his mailing address with Iowa Workforce Development. The claimant received the decision on an unspecified date but did not immediately file an appeal. The claimant's appeal was filed after contacting Workforce Development on or about August 21, 2008.

REASONING AND CONCLUSIONS OF LAW:

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. Franklin v. Iowa Department of Job Service, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with the appeal notice provision is jurisdictional unless the facts of a case show that the notice was invalid. Beardslee v. Iowa Department of Job Service, 276

N.W.2d 373, 377 (Iowa 1979). The question in this case thus is whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. The record shows the claimant was precluded from filing a timely appeal because he did not change his address of record nor act immediately to file an appeal within the ten-day period or as soon thereafter as possible.

The administrative law judge concludes that the failure to file a timely appeal within the time limit prescribed by the Iowa Employment Security Law was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code section 96.6-2. The administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal.

DECISION:

The July 9, 2008, reference 01, decision is affirmed. The appeal in this case was not timely and the decision of the representative remains in effect.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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