

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

ROBERT P CRAVEN
1834 E PARK AVE
DES MOINES IA 50320

XVEON GROUP INC
3127 W HURON ST
WATERFORD MI 48328

Appeal Number: 05A-UI-07343-HT
OC: 05/08/05 R: 02
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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

The employer, Xveon Group, Inc. (Xveon), filed an appeal from a decision dated June 6, 2005, reference 01. The decision allowed benefits to the claimant, Robert Craven. After due notice was issued a hearing was held by telephone conference call on August 3, 2005. The claimant provided a telephone number of (515) 554-2987. That number was dialed at 9:02 a.m. and the only response was a voice mail, which clearly identified it as belonging to Robert Craven. A message was left indicating the hearing would proceed without the claimant's participation unless he contacted the Appeals Section prior to the close of the record. By the time the record was closed at 9:26 a.m. the claimant had not responded to the message and did not participate in the hearing. The employer participated by General Manager Craig Ash. Exhibit D-1 was admitted into the record.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, finds that: The decision allowing benefits to the claimant was mailed to the employer's last known address on June 6, 2005. However, Xveon had purchased the company effective April 1, 2005, and had not changed the address with Iowa Workforce Development. The former owner forwarded the decision to the buyer's corporate address and it was received on July 1, 2005.

The corporate office forwarded the decision to General Manager Craig Ash in Des Moines, Iowa, and he received it July 5, 2005. He had to contact the former owner for the claimant's personnel file, even though Mr. Craven worked for the new owner and all the incidents which caused his separation occurred during the time he was employed with the new owner.

Mr. Ash prepared a letter of appeal dated July 7, 2005, which he sent to the employer's corporate office instead of directly to Iowa Workforce Development Appeals. The corporate office then forwarded the appeal letter in an envelope postmarked July 13, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the appeal is timely. The judge concludes it is not.

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 ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. Gaskins v. Unempl. Comp. Bd. of Rev., 429 A.2d 138 (Pa. Comm. 1981); Johnson v. Board of Adjustment, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

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 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. IDJS, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. Beardslee v. IDJS, 276 N.W.2d 373, 377 (Iowa 1979); see

also In re Appeal of Elliott 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert 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).

(1) The record shows that the appellant did have a reasonable opportunity to file a timely appeal.

The employer's receipt of the initial decision was delayed through no fault of its own. The record clearly establishes it was received on July 1, 2005, but not postmarked until July 13, 2005, due to various self-imposed delays. There was no need for the employer to have the claimant's personnel file from the former owner because all of the incidents which caused his separation happened during the time he was employed with the new owner. There was also no need for the general manager to send the appeal letter to the corporate office instead of directly to the Appeals Section. These unnecessary delays resulted in an appeal being filed two weeks after the initial decision was received. The administrative law judge concludes the appeal is not timely.

DECISION:

The decision of the representative dated June 6, 2005, reference 01, is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect. The claimant is qualified for unemployment benefits.

bgh\pjs