

**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**

**TODD A MALLET  
509 E 1<sup>ST</sup> ST  
SOUTH SIOUX CITY NE 68776**

**PECH OPTICAL CORPORATION  
PO BOX 2820  
SIOUX CITY IA 51106-2820**

**Appeal Number: 04A-UI-05618-AT  
OC: 04-11-04 R: 01  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Pech Optical Corporation filed an appeal from an unemployment insurance decision dated April 30, 2004, reference 01, which allowed benefits to Todd A. Mallett. After due notice was issued, a telephone hearing was held on June 11, 2004 with Mr. Mallett participating. Accounting and Human Resources Manager Karen Lindberg participated for the employer. Exhibit D-1, the appeal letter and envelope, were admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The decision from which Pech Optical Corporation has appealed states that it would become final unless the appeal was postmarked by May 10, 2004 or received by the Agency by that date. The appeal was filed by mail, the envelope receiving a postmark of May 17, 2004. The employer had received the adverse decision soon enough to file an appeal. Knowing that the call was not a substitute for an appeal, Accounting and Human Resources Manager Karen Lindberg had placed a call to Deputy Director Jane Bartow with questions about the fact-finding interview process. Ms. Lindberg lost track of time while waiting for a return call from Ms. Bartow.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the administrative law judge has jurisdiction to rule on the merits of this case. He does not. Iowa Code Section 96.6-2 gives a party only ten days from the date of a fact-finding decision to file an appeal. The Supreme Court of Iowa has ruled that the time limit for filing the appeal is jurisdictional. See Franklin v. Iowa Department of Job Service, 277 N.W.2d 877, 881 (Iowa 1979). In the absence of a timely appeal, the administrative law judge has no jurisdiction to rule on the merits of the case. The timeliness of an appeal filed by mail is determined by examining the postmark on the envelope. See Pepsi-Cola Bottling Company of Cedar Rapids v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990). Only in the absence of a postmark can the administrative law judge use a postage meter mark for determining timeliness.

The evidence in the record establishes that the appeal was untimely. The only mitigating circumstance offered by the employer was the call to Deputy Director Jane Bartow. The employer, however, acknowledged that the call was made knowing that the call did not constitute a valid appeal. The caller reasonably should have known of a possibility of delay in hearing from Ms. Bartow because she serves as the Agency's legislative liaison. The legislature was in session in April and May 2004.

The administrative law judge concludes that he has no jurisdiction to rule on the merits of this case.

DECISION:

The unemployment insurance decision dated April 30, 2004, reference 01, has become final and remains in effect. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

tjc/tjc