

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

CHAD D KLUVER
8905 LONGVIEW DR
JOHNSTON IA 50131

ADECCO USA INC
c/o TALX UC EXPRESS
PO BOX 66736
ST LOUIS MO 63166-6736

Appeal Number: 04A-UI-11164-AT
OC: 07-06-03 R: 02
Claimant: Appellant (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 – Timely Appeal

STATEMENT OF THE CASE:

Chad D. Kluver filed an appeal from an unemployment insurance decision dated October 1, 2004, reference 02, which denied benefits for the week ending April 10, 2004 upon a finding that he was unable to work the major portion of that week because of personal obligations. After due notice was issued, a telephone hearing was held November 9, 2004 with Mr. Kluver participating. The employer, Adecco USA, did not respond to the hearing notice. Exhibit D-1, the claimant's appeal letter and envelope, were admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: The decision from which Chad D. Kluver has appealed states that it would become final unless an appeal was postmarked by October 11, 2004 or received by the agency by that date. Mr. Kluver received the decision in time to file a timely appeal. He filed his appeal by mail. The envelope received a post mark on October 14, 2004.

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 an individual ten days from the date of a fact-finding decision to file an appeal. Otherwise, the statute states that benefits shall be paid or denied in accordance with the decision. The Supreme Court of Iowa has ruled that the time limit in the statute 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 cannot change an earlier decision, even if he disagrees with it.

The evidence in this record persuades the administrative law judge that Mr. Kluver could have filed a timely appeal but did not. Under these circumstances, the administrative law judge has no jurisdiction to rule on the merits of the case.

DECISION:

The unemployment insurance decision dated October 1, 2004, reference 02 has become final. The claimant is ineligible for unemployment insurance benefits for the week ending April 10, 2004.

b/tjc