

**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**

**JULIE A WILCOX  
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**EMPLOYERS MUTUAL CASUALTY CO  
c/o EMPLOYERS UNITY INC  
PO BOX 749000  
ARVADA CO 80006-9000**

**DONALD WINE  
ATTORNEY AT LAW  
9923 CLARK ST  
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**Appeal Number: 04A-UI-06883-H2T  
OC: 11-09-03 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.6-2 – Timeliness of Appeal  
Section 96.7-2a(6) – Appeal from the Statement of Charges

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 5, 2003, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on August 12, 2004. The claimant did participate and was represented by Donald Wine, Attorney at Law. The employer did participate through Allan Whitaker, Administrative Services Manager for Des Moines Branch; Jessica Hernandez, Representative with Employers Unity; Karen Miner, Mailroom Manager for Employers Unity; Pam Carter, Unit Leader for Support Staff; Valerie Spargo, Clerical Supervisor; Melissa Nadeau, Charge Analyst; and was represented by Janet Wagner of Employers Unity. Mary Piagentini, Administrative Assistant participated on behalf of the Agency. Department's Exhibits D-1 and D-2 were received into the record.

#### FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A fact-finding representative's decision was mailed to Employer's Unity at their correct address on December 5, 2003. Employer's Unity did not receive the fact-finding decision. A representative of Employer's Unity, Katy Soller, filled a notice of protest and did participate in the fact-finding interview held on December 4, 2003. The fact-finding representative's decision was mailed out on December 5, 2003 and was sent to the correct address for Employer's Unity.

A statement of charges was mailed to the employer on February 9, 2004 for the fourth quarter of 2003. The employer admits that they did receive the statement of charges. The employer postmarked its appeal of that Statement of Charges on June 23, 2004, which is beyond the 30-day appeal deadline. The employer clearly had notice that a claim was pending as is illustrated by their correspondence with the Agency found in Department's Exhibit's D-1 and D-2, as well as the acknowledgement by Ms. Hernandez and Ms. Nadeau of their receipt of the statement of charges.

#### REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.6-2 provides in pertinent part:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant.

Iowa Code Section 96.7-2-a(6) provides:

2. Contribution rates based on benefit experience.
  - a. (6) Within 40 days after the close of each calendar quarter, the department shall notify each employer of the amount of benefits charged to the employer's account during that quarter. The notification shall show the name of each individual to whom benefits were paid, the individual's social security number, and the amount of benefits paid to the individual. An employer which has not been notified as provided in section 96.6, subsection 2, of the allowance of benefits to an individual, may within 30 days after the date of mailing of the notification appeal to the department for a hearing to determine the eligibility of the individual to receive benefits. The appeal shall be referred to an administrative law judge for hearing and the employer and the individual shall receive notice of the time and place of the hearing.

The administrative law judge concludes that the employer did not file its appeal of the Statement of Charges within the time period prescribed by the Iowa Employment Security Law because they did not file their appeal of that Statement within 30 days. Employers Unity learned of existence of an adverse decision when they received the statement of charges of February 9, 2004. Employers Unity clearly had knowledge that an adverse decision existed because they corresponded with the Agency regarding the Statement of Charges. Employers Unity did not take any action to appeal the adverse decision even though a copy of it was not sent to them until almost four months after the original Statement of Charges was sent to them. 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 administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code Section 96.6-2, and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See, Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979) and Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The December 5, 2003, reference 01, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect. Benefits are allowed, provided the claimant is otherwise eligible.

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