

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

DANIEL J DOSSEY  
24351 HWY 151  
CASCADE IA 52033

WEBBER METAL PRODUCTS INC  
PO BOX 10  
CASCADE IA 52033-0010

Appeal Number: 04A-UI-06618-AT  
OC: 05-09-04 R: 04  
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, 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 – Timely Appeal

STATEMENT OF THE CASE:

Daniel J. Dossey filed an appeal from an unemployment insurance decision dated May 28, 2004, reference 01, which disqualified him for benefits upon a finding that he was discharged from employment because of excessive unexcused absenteeism and tardiness. After due notice was issued, a telephone hearing was held July 7, 2004 with Mr. Dossey participating and presenting additional testimony by his wife, Abigail Dossey. Human Resources Manager Steve Huss participated for the employer, Webber Metal Products, Inc. Exhibit D-1, the claimant's appeal letter, was 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 Daniel J. Dossey has appealed states that it would become final unless an appeal was postmarked by June 7, 2004 or received by the Agency by that date. Mr. Dossey received the adverse decision on June 2, 2004. On June 4, 2004, Mr. Dossey mailed an appeal to the Agency at 100 East Grand Avenue, Des Moines, Iowa. The U.S. Postal Service returned the letter on June 9, 2004 because it was addressed incorrectly. Mr. Dossey filed an appeal to the correct address in an envelope postmarked June 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. This depends on whether the appeal can be accepted as timely.

Iowa Code Section 96.6-2 gives an individual ten days in which to file an appeal. In the absence of a timely appeal, the administrative law judge has no jurisdiction to rule on the merits of a case. See Franklin v. Iowa Department of Job Service, 277 N.W.2d 877, 881 (Iowa 1979). The timeliness of an appeal filed by mail is determined by examining the postmark on the envelope in which the appeal is sent to the Agency. See Pepsi-Cola Bottling Company of Cedar Rapids v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

The fact-finding decision contained the mailing address of the Agency. The letter postmarked June 4, 2004 was sent to an incorrect address. This error was the fault of neither the Agency nor the U.S. Postal Service. The administrative law judge concludes that the claimant did not use due diligence in the initial attempt to file an appeal. The untimely submission on June 14, 2004 was not the fault of the Agency or the Postal Service. Therefore, additional time for the submission cannot be granted. See 871 IAC 24.35(2).

#### DECISION:

The unemployment insurance decision dated May 28, 2004, reference 01, has become final. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

tjc/tjc