

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

PENNY S BUTLER
Claimant

APPEAL NO. 10A-UCFE-00024-SWT

**ADMINISTRATIVE LAW JUDGE
NUNC PRO TUNC DECISION**

US POSTAL SERVICE
Employer

**Original Claim: 11/30/08
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated January 7, 2009, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on July 8, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing and agreed that a decision could be made based on the file. No one participated in the hearing on behalf of the employer.

This nunc pro tunc decision is being issued to correct the appeal number of the case.

ISSUE:

Did the employer file a timely appeal?

FINDINGS OF FACT:

An unemployment insurance decision was mailed to the employer's last known address of record on January 7, 2009. The decision concluded the claimant's discharge on November 26, 2008, was not for work-connected misconduct and stated it was final unless a written appeal was postmarked or received by the Appeals Section by January 19, 2009. The employer received the decision within the ten days allowed to appeal it but never appealed it before the appeal deadline. The employer appealed a decision dated May 6, 2010, reference 01, that concluded a decision on the claimant's separation from employment was made on a prior claim and remained in effect on May 17, 2010.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the unemployment insurance decision dated January 7, 2009, was filed timely.

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 Iowa Supreme Court has ruled that appeals from unemployment insurance decisions must be filed within the time limit set by statute and become final in the absence of a timely appeal. Franklin v. IDJS, 277 N.W.2d 877, 881 (Iowa 1979); Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979).

The employer never appealed the decision dated January 7, 2009, within the ten days provided by law and the decision became final.

DECISION:

The unemployment insurance decision dated January 7, 2009, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw