

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TROY D ARMSTRONG
Claimant

APPEAL NO. 07A-UI-06525-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY OF SHENANDOAH
Employer

**OC: 04/29/07 R: 01
Claimant: Respondent (1)**

Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

City of Shenandoah (employer) appealed a representative's May 15, 2007 decision (reference 01) that concluded Troy D. Armstrong (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 18, 2007. The claimant participated in the hearing. Byron Harris, the city administrator and acting clerk, Karen Lang, the payroll clerk, and Dennis Marks, the police chief, participated in the hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer file a timely appeal or did the employer establish a legal excuse for filing a late appeal?

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits during the week of April 29, 2007. A Notice of Claim was mailed to the employer on May 2, 2007. Lang received the Notice of Claim and forwarded it to Marks. Marks completed the Notice of Claim in a timely manner protesting any charges to the employer's account.

The employer received information that a fact-finding hearing would be held and the employer would be contacted. The employer waited for the fact-finding interview, but never participated in an interview. On May 15, 2007, a representative's decision was mailed to the claimant and employer indicating the claimant was qualified to receive unemployment insurance benefits as of April 29, 2007. The May 15, 2007 decision also informed the parties an appeal had to be filed on or before May 25, 2007.

The May 15, 2007 decision was sent to the employer at the same address as the Notice of Claim. Lang probably received the May 15, 2007, but does not clearly remember if she filed the

decision or what she did with the decision. Mail from Des Moines usually takes about two days to get to the employer.

The employer's clerk retired a year ago. Harris has taken over the clerk's job duties. Harris did not know anything about the May 15, 2007 decision until late June 2007. On June 29, 2007, the employer asked the Department to reopen the claimant's case because the employer had never participated in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's decision is mailed to the parties' last-known address, files an appeal from the decision, the decision is final. Benefits shall then be paid or denied in accordance with the representative's decision. Iowa Code § 96.6-2. Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983).

The Iowa Supreme Court has ruled that appeals from unemployment insurance decisions must be filed within the time limit set by statute and the administrative law judge has no authority to review a decision if a timely appeal is not filed. Franklin v. IDJS, 277 N.W.2d 877, 881 (Iowa 1979); Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979). In this case, the employer's June 29, 2007 appeal was filed more than a month after the deadline for appealing expired.

The next question is whether the employer had a reasonable opportunity to file an appeal in a timely fashion. Hendren v. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC, 212 N.W.2d 471, 472 (Iowa 1973). The evidence establishes the employer had a reasonable opportunity to file a timely appeal, but did not. Even though Harris may not have personally seen the May 15, 2007 decision, the facts indicate the employer received the decision in a timely manner. What happens to a decision after it has been delivered to the employer's address of record is within the employer's control.

The failure to file a timely appeal was not due to any Agency error or misinformation or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) would excuse the delay in filing an appeal. Since the employer did not file a timely appeal or establish a legal excuse for filing a late appeal, the Appeals Section has no legal jurisdiction to make a decision on the merits of the appeal.

DECISION:

The representative's May 15, 2007 decision (reference 01) is affirmed. The employer did not file a timely appeal or establish a legal excuse for filing a late appeal. The Appeals Section has no jurisdiction to address the merits of the employer's appeal. This means the claimant remains

qualified to receive unemployment insurance benefits as of April 29, 2007, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css