

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

WILLIAM J SIMPSON  
104½ N 13<sup>TH</sup> ST  
MARSHALLTOWN IA 50158

SWIFT & COMPANY  
C/o EMPLOYERS UNITY INC  
PO BOX 749000  
ARVADA CO 80006-9000

Appeal Number: 04A-UI-07172-RT  
OC: 01-11-04 R: 02  
Claimant: Respondent (2-R)

**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 – Initial Determination (Timeliness of Appeal)  
Section 96.6-2 – Initial Determination (Timeliness of Protest)  
Section 96.7-2-a-6 – Appeal of Quarterly Statement of Charges

STATEMENT OF THE CASE:

The employer, Swift & Company, filed an appeal from a quarterly statement of charges indicating that the claimant, William J. Simpson, had received unemployment insurance benefits charged to the account of the employer. After due notice was issued, a telephone hearing was held on August 16, 2004, with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where he or any of his witnesses could be reached for the hearing, as instructed in the notice of appeal. Karen Miner and Tabitha Nichols, both of Employer's Unity, Inc., participated in the hearing for the employer. The employer was represented by Leigh Ann Krohe, of Employer's Unity, Inc. Employer's Unity, Inc., is the representative for the employer, Swift & Company. Employer's Exhibit 1 was

admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development unemployment insurance records for the claimant. A hearing on this matter had originally been scheduled for July 26, 2004 at 1:00 p.m. and rescheduled by the administrative law judge.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibit 1, the administrative law judge finds: The claimant filed for unemployment insurance benefits effective January 11, 2004. A notice of that claim was sent to the employer in care of the employer's representative, Employer's Unity, Inc., on January 16, 2004. That notice was never received by the employer or its representative, Employer's Unity, Inc. Accordingly, no decision was ever issued in this matter concerning the claimant's entitlement to unemployment insurance benefits pursuant to his separation from the employer, Swift & Company. There was therefore no decision from which the employer could appeal. A quarterly statement of charges for the first quarter of 2004 was mailed to the employer on May 7, 2004. The employer received the quarterly statement of charges and mailed an appeal of such quarterly statement of charges in an envelope bearing a postmark of June 5, 2004, as shown at Employer's Exhibit 1. This appeal of the quarterly statement of charges was accepted by Iowa Workforce Development and sent to the Appeals Section for determination.

#### REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the employer's appeal of the quarterly statement of charges for the first quarter of 2004 was appropriate and timely and, if not, whether the employer can demonstrate good cause for a delay in filing its appeal of the quarterly statement of charges. The administrative law judge concludes that the employer's appeal of the quarterly statement of charges was timely and appropriate and that the employer's appeal of the quarterly statement of charges should be accepted and it is hereby accepted.

Iowa Code Section 96.6-2 provides:

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. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. Gaskins v. Unempl. Comp. Bd. of Rev., 429 A.2d 138 (Pa. Comm. 1981); Johnson v. Board of Adjustment, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

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 record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. 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 question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert 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).

(2) The record shows that the appellant did not have a reasonable opportunity to file a timely appeal.

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 forty 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 thirty 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 has the burden to prove that its appeal of the quarterly statement of charges was appropriate and timely or that the employer had good cause for a delay in the filing of such an appeal. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that its appeal of the quarterly statement of charges for the first quarter of 2004 for the employer is timely. The evidence establishes that the employer, Swift & Company, has a representative for unemployment insurance purposes, Employer's Unity, Inc., and all matters sent to the employer are, in fact, sent to its representative. The evidence also establishes that neither the employer nor the employer's representative received a copy of the claimant's notice of claim sent to the employer in care of its representative on January 16, 2004. Since the employer never received a notice of the claim, it could not file a protest and therefore, the employer has demonstrated good cause for failing to file a protest, including in a timely fashion. Since no protest was filed, no decision was sent to the employer or its representative on the claimant's separation from the employer and the claimant's entitlement to benefits. Therefore, since no decision was sent to the parties, the parties had no decision to appeal. The administrative law judge concludes that the employer's failure to file an appeal from a decision is justified, including the lack of timeliness of such an appeal. Finally, the administrative law judge concludes that the employer's appeal of the quarterly statement of charges is timely. Iowa Workforce Development records indicate, and it is confirmed by Employer's Exhibit 1, that a quarterly statement of charges from Iowa Workforce Development was appropriately mailed to the employer and its representative on May 7, 2004 within the 40-day deadline after the close of the quarter, in this case the first quarter of 2004. The employer filed an appeal of the quarterly statement of charges by mailing the appeal in an envelope bearing a postmark of June 5, 2004, which is within the 30-day deadline for such an appeal. Accordingly, the administrative law judge concludes that the employer has demonstrated good cause for a failure to protest the claimant's claim and further, good cause for not filing any appeal of any decision and, finally, that its appeal of the quarterly statement of charges for the first quarter of 2004 is appropriate and timely. Therefore, the administrative law judge concludes that Iowa Workforce Development does have jurisdiction of this matter.

The other issue on the notice sent to the parties dealt with whether the employer's first quarter 2004 statement of charges is correct. The administrative law judge concludes that he does not have jurisdiction to decide that issue today because that issue requires a determination of the claimant's separation from the employer and whether the claimant is disqualified to receive unemployment insurance benefits either because he was discharged for disqualifying misconduct or because he left work voluntarily without good cause attributable to the employer. Those particular issues were not set out on the notice of appeal and the administrative law judge concludes that he does not now have jurisdiction to decide those issues. Further, there is also an issue as to whether the claimant is going to be overpaid unemployment insurance benefits and that issue was also not set out on the notice and the administrative law judge also does not have jurisdiction to decide that issue. Accordingly, this matter is remanded to Claims for an investigation and determination as to whether the claimant's separation from the employer, Swift & Company, was disqualifying and, if so, whether the claimant is overpaid unemployment insurance benefits.

DECISION:

The employer's appeal of the quarterly statement of charges for the first quarter of 2004 is timely and appropriate. Iowa Workforce Development has jurisdiction in this matter. There is no other decision from which the employer can appeal. Therefore, in order to determine whether the claimant is entitled to receive unemployment insurance benefits and whether he is overpaid unemployment insurance benefits, this matter must be remanded to Claims for an investigation and determination as to whether the claimant's separation from the employer, Swift & Company, is disqualifying and, if so, whether the claimant is overpaid unemployment insurance benefits.

REMAND:

This matter is remanded to Claims for an investigation and determination as to whether the claimant is disqualified to receive unemployment insurance benefits because his separation from his employer, Swift & Company, was disqualifying, and further, if disqualifying, whether the claimant is overpaid unemployment insurance benefits.

b/b