

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319**

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**AMY E HELLICKSON**

Claimant

and

**HY-VEE INC**

Employer

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**HEARING NUMBER: 15B-UI-02759**

**EMPLOYMENT APPEAL BOARD  
DECISION**

**NOTICE**

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION:** 96.5-2-A, 96.6-2

**DECISION**

**UNEMPLOYMENT BENEFITS ARE DENIED**

The Employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

**FINDINGS OF FACT:**

The representative's decision was mailed to the Claimant's last-known address of record on January 30, 2015. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by February 9, 2015. The appeal was not filed until it was postmarked on February 27, 2015, which is after the date noticed on the disqualification decision.

The Claimant moved from her prior address of record in late February 2015. Prior to actual lease termination, the Claimant went to live with her mother. This was around early February. She was not picking up her mail at the old address regularly, and as a result the Post Office began holding her mail. Around February 26, 2015 the Claimant went to retrieve the held mail. She then discovered her decision from Workforce. She did not file a forwarding address at any time before February 26, 2015.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code 96.6 provides:

2. *Initial determination.* ... 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 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 - but not conclusive - evidence of the date of mailing.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge and this Board have no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. *E.g. Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973). The question of whether the Employer has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that "the submission of any ... appeal...not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service."

These principles govern this matter - not the good cause rule which applies to late appeals to the Board. *C.f. Houlihan v. Employment Appeal Bd.*, 545 N.W.2d 863 (Iowa 1996)(15 day appeal deadline to Board extended for good cause under Board rule 3.1). The rules of Iowa Workforce Development do not give this Board the flexibility to extend the deadline for good cause. There is no indication that the delay in this case was caused by an error of Workforce or by the postal service. The Claimant didn't get her mail because she just didn't go look for it, and gave neither Workforce nor the Post Office any means to get the mail to where she was living. Since the requirements of rule 24.35(2) are not satisfied the Board is obliged to apply the ten day period and to reverse the administrative law judge.

This conclusion is bolstered by the fact that the Claimant's excuse does not even strike us as satisfying good cause. People sometimes take vacations, people sometimes travel on business, employers shut down over the holidays, and unemployed workers travel to look for work. We expect such persons to make some sensible arrangement for handling of important mail while they are out. The absence is known in advance and often for a predictable period of time. Arrangements to at least look for important mail can also be made in advance. At a minimum the Claimant certainly could have told Workforce to deliver her mail to a

different address. True, this sometimes results in a delay but we have, in the past, accounted for this in our appeals. Here the Claimant made no effort at all to take care of her affairs. Thus even if we were to apply a good cause standard, rather than the stricter jurisdictional one, still we would find the appeal untimely.

**DECISION:**

The administrative law judge's decision dated April 7, 2015 is **REVERSED**. The Employment Appeal Board concludes that the appeal to the Administrative Law Judge was untimely and that, as a result, there was no jurisdiction to entertain the Claimant's appeal. Accordingly, he is denied benefits until such time the Claimant has worked in and was paid wages for insured work equal to ten times the Claimant's weekly benefit amount, provided the Claimant is otherwise eligible. See, Iowa Code section 96.5(1)(g); Iowa Code section 96.5(2)"a".

The Board remands this matter to the Iowa Workforce Development Center, Benefits Bureau, for a calculation of the overpayment amount based on this decision.

The Employer has requested this matter be remanded for a new hearing. The Employment Appeal Board finds the applicant did not provide good cause to remand this matter. Therefore, the remand request is **DENIED**.

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Kim D. Schmett

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Ashley R. Koopmans

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James M. Strohman

RRA/fnv