

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

PATRESA A STONEHOCKER  
3710 THIRD ST APT 2  
DES MOINES IA

SCHNEIDER NATIONAL CARRIERS INC  
c/o TALX UCM SERVICES INC  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-00899-DWT  
OC 12/07/03 R 02  
Claimant: Respondent (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 are 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 – Timeliness of Appeal

STATEMENT OF THE CASE:

Schneider National Carriers, Inc. (employer) appealed a representative's January 15, 2004 decision (reference 02) that concluded Patresa A. Stonehocker (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 16, 2004. The claimant participated in the hearing. Stephanie Cawvey, a representative with TALX UCM Services, Inc., and John Harrison, the service driver manager, appeared on the employer's behalf. 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.

ISSUES:

Did the employer file a timely appeal or 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 December 7, 2003. On January 15, 2004, a decision was mailed to the claimant and employer's unemployment insurance representative, TALX UCM Services, Inc. This decision indicated the claimant was qualified to receive unemployment insurance benefits as of December 7, 2003.

TALX UCM Services, Inc. received the representative's decision on January 20, 2004. TALX did not receive information from the employer until after 3:00 p.m. on January 26. TALX requires its employees to fax an appeal after 3:00 p.m. because the company's mail goes out by 3:00 p.m.

A TALX representative attempted to fax the employer's appeal to the Appeals Section on January 26, 2004. The representative knew the fax did not go through on January 26, 2004. Since it was too late to mail the appeal from TALX offices, the representative tried to fax the employer's appeal again the next day, January 27, 2004. Again, the fax was not successfully transmitted. On January 28, 2004, TALX again faxed the employer's withdrawal letter. This time the Appeals Section received the employer's faxed appeal letter.

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 appeal was filed 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.

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. First, the facts indicate the employer did not timely submit information to TALX. Next, even though TALX could have taken special steps to mail the appeal letter on January 26, this was not done. On January 27, a TALX representative was still unsuccessful getting a fax transmitted to the Appeals Section. Even though the appeal letter could have been mailed on January 27, it was not. Since TALX had the January 15, 2004 decision in time to file a timely appeal, the problems a TALX representative experienced are

internal, such as requiring its clients, the employer, to timely submit information to TALX and establishing a procedure when TALX knows a fax is not successfully transmitted on a deadline date.

The employer did not establish a legal excuse for filing a late appeal. Therefore, the Appeals Section has no legal jurisdiction to address the reasons for the claimant's separation even though testimony was obtained from the parties concerning the separation issue.

**DECISION:**

The representative's January 15, 2004 decision (reference 02) 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 December 7, 2003, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjf