

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN T WALTERS
Claimant

APPEAL NO. 07A-UI-02613-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OFFICE DEPOT INC
Employer

**OC: 06/04/06 R: 04
Claimant: Appellant (4/R)**

Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

John T. Walters (claimant) appealed a representative's February 16, 2007 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Office Depot, Inc. (employer) would not be charged because the claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 29, 2007. The claimant made a request for an in-person hearing. Since there was a question of whether the claimant filed a timely appeal, only evidence on the timeliness of appeal issue was presented during the March 29 hearing.

The claimant participated in the hearing with his attorney, Todd Klapatauskas. Kevin Borzym appeared on the employer's behalf. Since part of the claimant's March 15, 2007 appeal letter was cut off, the claimant was asked to provide a copy of the complete letter to show the information he had put on the top of the form. This document was identified as Claimant's Exhibit A. The claimant provided a copy of his complete appeal letter. On April 13, 2007, the employer indicated there was no objection to admitting this document into the record as evidence. 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 claimant file a timely appeal or establish a legal excuse for filing a late appeal?

FINDINGS OF FACT:

The claimant reopened his claim for benefits during the week of January 28, 2007. On February 16, 2007, a representative's decision was mailed to the claimant and employer indicating the claimant was not qualified to receive unemployment insurance benefits as of January 28, 2007.

The claimant received the representative's decision on or about February 20, 2007. The claimant mailed a letter appealing this decision on February 22, 2007. When the claimant did not receive any information about his appeal, he went to local Workforce office. On March 15,

2007, the claimant learned the Appeals Section had no record of receiving his February 22 appeal letter. The claimant then filed his second appeal from a representative's February 16, 2007 decision at his local Workforce office. (Claimant Exhibit A).

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 claimant's first appeal was filed before the February 26, 2007 deadline for appealing expired. The claimant's testimony that he mailed an appeal letter on February 22 is credible. A preponderance of the evidence establishes the claimant filed a timely appeal. Therefore, the Appeals Section has jurisdiction to address the merits of the claimant's appeal.

This matter is remanded to the Appeals Section to schedule an in-person hearing during the week of July 23 in Dubuque, Iowa, to take evidence regarding the reasons for the claimant's employment separation and whether he is qualified to receive benefit as of January 28, 2007.

DECISION:

The claimant filed a timely appeal from a representative's February 16, 2007 decision (reference 02). The Appeals Section has jurisdiction to address the merits of the claimant's appeal. This matter is remanded to the Appeals Section to schedule an in-person hearing during the week of July 23 in Dubuque, Iowa, to address the merits of the claimant's appeal.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css