

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

B JAY R FOLEY
Claimant

APPEAL NO. 09A-UI-04927-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

INNOVATIVE LIGHTING INC
Employer

OC: 09/28/08
Claimant: Appellant (1)

Section 96.5-2-a – Discharge
Section 96.6-2 – Timely Appeal

STATEMENT OF THE CASE:

B Jay R. Foley filed an appeal from an unemployment insurance decision dated October 21, 2008, reference 01, that disqualified him for unemployment insurance benefits. After due notice was issued, a telephone hearing was held April 21, 2009 with Mr. Foley participating. Lasey Handeland participated for the employer, Innovative Lighting, Inc. Exhibit D-1 was admitted into evidence.

ISSUE:

Did the claimant file a timely appeal?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The decision from which B Jay R. Foley has appealed states that it would become final unless an appeal was postmarked by October 31, 2008 or received by the Agency by that date. Mr. Foley filed his appeal on March 27, 2009. He had been aware that he had lost at the fact-finding level.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant has filed a timely appeal. It does not. Iowa Code section 96.6-2 gives a party ten days from the date of the fact-finding decision to file an appeal. The statute goes on to say that if no appeal is filed within that time benefits shall be paid or denied in accordance with the decision. The Supreme Court of Iowa has ruled that the time limit in the statute is jurisdictional. See Franklin v. Iowa Department of Job Service, 277 N.W.2d 877, 881 (Iowa 1979). While Mr. Foley's appeal letter states that he never received the fact-finding decision, he testified under oath that he was aware that he had lost and that he had hoped to find a job without applying for unemployment insurance benefits. The administrative law judge concludes that whether or not Mr. Foley received the fact-finding

decision within ten days of its issuance, he did not act in a reasonable amount of time in processing his appeal. See 871 IAC 24.35.

DECISION:

The unemployment insurance decision dated October 21, 2008, reference 01, has become final and remains in effect. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs