

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

MAIA J ARNOLD
435 WEST M ST
FOREST CITY IA 50436

HCP TEMPORARY STAFFING INC
HCP SERVICES
1730 PLYMOUTH RD STE 301
MINNETONKA MN 55305

Appeal Number: 05A-UI-12197-DWT
OC: 10/16/05 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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

HCP Temporary Staffing, Inc. (employer) appealed a representative's November 21, 2005 decision (reference 01) that concluded Maia J. Arnold (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the employer did not file a timely protest. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 19, 2005. The claimant participated in the hearing. The employer failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which the employer's witness/representative could be contacted to participate in the hearing. As a result, no one represented the employer.

After the hearing had been closed and the claimant had been excused, the employer contacted the Appeals Section. The employer made a request to reopen the hearing. Based on the employer's request to reopen the hearing, the administrative record, and the law, the

administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is there good cause to reopen the hearing?

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 October 16, 2005. On November 21, 2005 a representative's decision was mailed to the claimant and employer. This decision held the employer's account subject to charge because the employer had not filed a timely protest from a notice of claim that had been mailed on October 19, 2005. The decision also informed the parties that the decision was final unless an appeal was filed by December 1, 2005. The employer faxed an appeal letter to the Appeals Section on December 2, 2005.

The employer received the hearing notice, but did not read the notice carefully. The employer did not contact the Appeals Section prior to the hearing. By the time the employer contacted the Appeals Section on December 19, the hearing had been closed and the claimant had been excused. The employer requested that the hearing be reopened.

REASONING AND CONCLUSIONS OF LAW:

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)(b) and (c).

The employer failed to read and follow the instructions on the hearing notice. As a result, the employer did not establish good cause to reopen the hearing.

Unless the claimant or employer, 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 one day after the December 1, 2005 deadline for appealing expired.

The record does not establish any legal excuse for filing a late appeal. 871 IAC 24.35(2). Since the employer did not file a timely appeal and there is no indication the employer had a legal excuse for filing a late appeal, the Appeals Section has no legal jurisdiction to make a decision on the merits of the appeal.

DECISION:

The employer's request to reopen the hearing is denied. The representative's November 21, 2005 decision (reference 01) 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 as of October 16, 2005, the claimant remains qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjf