

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SARAH A STROVERS
Claimant

APPEAL NO: 06A-UI-08502-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PLEASANT PARK ESTATES INC
Employer

**OC: 09/25/05 R: 01
Claimant: Respondent (1)**

Section 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 14, 2005, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on September 11, 2006. Proper notice of the hearing was given to the parties. The claimant participated in the hearing. Clarice Wright participated on behalf of the employer. Exhibits A-1 and A were admitted into evidence at the hearing.

ISSUE:

Did the employer file a timely appeal?

FINDINGS OF FACT:

An unemployment insurance decision was mailed to the employer's last-known address of record on October 14, 2005. The decision concluded the claimant's discharge was not for work-connected misconduct and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by October 24, 2006.

The owner of the business, Clarice Wright, had given another company the authority to operate the business. While the owner may not have received notice of the decision, the manager was notified about the decision within the ten-day period for appealing the decision. The employer had not made any change in address of record with the Agency for the business at that time. Wright filed a written appeal on August 9, 2006, which is after the time period for appealing had expired, after receiving the quarterly statement of benefit charges.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer filed a timely appeal.

Iowa Code section 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . 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 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 employer failed to file an appeal within the time period prescribed by Iowa Code section 96.6-2. 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 the protest. Wright argued she was not given the opportunity to timely appeal the decision. The fact that Wright has someone operating her facility that did not appeal the decision or notify her so she could appeal it does not excuse the late filing of her appeal. It is up to the employer to set up procedures for handling unemployment insurance decisions so that situations such as this do not occur. The manager who was operating the facility must be considered Wright's agent. If he was at fault in failing to appeal the decision, that fault is attributed to the principal in this case, the employer.

DECISION:

The unemployment insurance decision dated October 14, 2005, reference 01, is affirmed. The employer's appeal was untimely. The decision that the claimant is qualified to receive benefits remains in affect.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs