

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

GARY L SHERWOOD  
813 N MARKET  
OSKALOOSA IA 52577

MC WANE INC  
D/B/A CLOW VALVE CO  
902 S 2<sup>ND</sup> ST  
OSKALOOSA IA 52577

Appeal Number: 05A-UI-01105-DWT  
OC: 12/21/03 R: 03  
Claimant: Appellant (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 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.6-2

STATEMENT OF THE CASE:

Gary L. Sherwood (claimant) appealed a representative's August 25, 2004 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits, and the account of McWane, Inc., doing business as Clow Valve Company (employer), would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 16, 2005. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. David Cummins appeared on the employer's behalf. Based on the administrative record 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 established a claim for unemployment insurance benefits during the week of December 21, 2003. He filed an additional claim during the week of August 1, 2004. On August 25, 2004, a representative's decision was mailed to the claimant and employer. This decision indicated the claimant was not qualified to receive unemployment insurance benefits as of August 1, 2004.

The claimant did not appeal the August 25, 2004. The claimant was working for another employer when this decision was issued. The claimant established a new benefit year during the week of January 9, 2005. The claimant appealed a January 25, 2005 decision that concluded he was not qualified to receive unemployment insurance benefits because a representative's August 25, 2004 decision disqualified the claimant from receiving benefits. The claimant appealed the decision on February 1, 2005.

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 appeal was filed after the September 4, 2004 deadline for appealing expired.

The next question is whether the claimant 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 record indicates the claimant had a reasonable opportunity to file a timely appeal, but did not.

The record indicated the claimant's 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. Since the record does not establish a legal excuse for filing a late appeal, the Appeals Section has no legal jurisdiction to make a decision on the merits of an appeal for the August 25, 2004 decision.

DECISION:

The representative's August 25, 2004 decision (reference 02) is affirmed. The claimant did not file a timely appeal, and the Appeals Section has no jurisdiction to address the merits of his appeal. This means the claimant is disqualified from receiving unemployment insurance benefits as of August 1, 2004. This disqualification continues until he has been paid ten times

his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

dlw/tjc