

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANITA LEDESMA-TREVINO**  
Claimant

**APPEAL NO. 08A-UI-08051-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BECKETT'S PUBLIC HOUSE LTD**  
Employer

**OC: 06/08/08 R: 03  
Claimant: Respondent (1)**

Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Beckett's Public House Ltd. (employer) appealed a representative's July 31, 2008 decision (reference 01) that concluded Anita Ledesma-Trevino (claimant) was eligible to receive benefits, and the employer's account was subject to charge because the employer had not filed a timely protest. A hearing was initially scheduled on September 24. 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 representative/witness 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 and requested that the hearing be reopened. The hearing was reopened because the employer had not received the hearing notice prior to the scheduled hearing. After hearing notices were again mailed to the parties' last-known addresses of record, a telephone hearing was held on October 22, 2008. The claimant was called, but she was not available for the hearing. The claimant contacted the Appeals Section two hours after the scheduled hearing. Justin Zehr, the executive chef, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

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 benefits during the week of June 8, 2008. A notice of claim was mailed to the employer on July 11, 2008. The general manager gave the notice of claim to Zehr on or about July 29, 2008. Zehr faxed the employer's protest on July 29, 2008.

On July 31, 2008 a representative's decision was mailed to the claimant and employer indicating the claimant was eligible to receive benefits and the employee's account was subject to charge because the employer had not filed a timely protest. Zehr does not know when the

employer received the July 31 decision. The general manager again gave the representative's July 31, 2008 decision to him to appeal. Zehr filed an appeal on September 9, 2008.

The employer has had problems receiving mail from the Department. On September 10 a hearing notice was mailed to the parties informing them about a hearing scheduled on September 24. Zehr did not receive the hearing notice until September 24, after the hearing had been closed. When the hearing was reopened, another hearing notice was sent on September 26. Zehr received that hearing notice within about a week.

#### **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 employer's appeal was filed almost a month after the August 10, 2008 deadline for appealing expired.

The next question is whether the employer 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 evidence suggests Zehr did not receive the notice of claim or initial hearing notice within a reasonable time. However, Zehr does not open the employer's mail. The general manager gave him the mail in this case. Zehr does not know when the general manager initially received the July 31 decision.

Considering the evidence that is most favorable to the employer, the longest it took the employer to receive mail in this matter was 14 days (the first hearing notice.) Without knowing exactly when the employer received the July 31 representative's decision, it seems unlikely it took over a month for the employer to receive the representative's July 31 decision. Whoever opens the employer's mail may have set the July 31 decision aside for awhile or misplaced it before Zehr received it in September. The fact Zehr did not receive the July 31 decision until early September does not mean the employer did not receive it sometime in August.

The evidence does not establish that the employer's failure to file a timely appeal was due to a 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 appeal was not filed timely and the evidence 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 the employer's appeal.

#### **DECISION:**

The representative's July 31, 2008 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 legal jurisdiction to address the merits of the employer's appeal. This means the claimant remains eligible to receive benefits and the employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css