

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUSTIN W HOBART
Claimant

APPEAL NO. 07A-UI-03851-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**L A LEASING INC
SEDONA STAFFING**
Employer

**OC: 01/28/07 R: 04
Claimant: Appellant (1)**

Section 96.6-2 – Timely Appeal

STATEMENT OF THE CASE:

Justin W. Hobart filed an appeal from an unemployment insurance decision dated April 2, 2007, reference 03, that disqualified him for benefits. After due notice was issued, a telephone hearing was held May 14, 2007 with Mr. Hobart participating. The employer involved in the case was Sedona Staffing. Rhonda Stout was available to testify but was not called. Colleen McGuinty represented the employer in the hearing. Exhibit One was admitted into evidence.

ISSUE:

Did the claimant file a timely appeal?

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all matters of record, the administrative law judge finds: The decision from which Justin W. Hobart has appealed states that it would become final unless an appeal was postmarked by April 12, 2007. Mr. Hobart received the decision on or about April 9, 2007. He completed an appeal on April 11, 2007 and filed it via the U.S. Postal Service. The envelope was postmarked on April 13, 2007, one day after the expiration of the appeal period.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the administrative law judge has jurisdiction to rule on the merits of this case. He does not. Iowa Code section 96.6-2 gives a party ten calendar days from the date of a fact-finding decision to file an appeal. 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). In the absence of a timely appeal, the administrative law judge has no legal authority to reconsider the merits of the case.

The timeliness of an appeal filed via the U. S. Postal Service is determined by an examination of the postmark date, not the date of the completion of the appeal document or the date that the document is received. See Pepsi-Cola Bottling Company of Cedar Rapids v. Employment

Appeal Board, 465 N.W.2d 674 (Iowa App. 1990). Although Mr. Hobart filled out the appeal document within the time specified by statute, the envelope in which it was contained did not receive a postmark until after the end of the appeal period. Under these circumstances, the administrative law judge concludes he has no jurisdiction to rule on the merits of this case.

DECISION:

The unemployment insurance decision dated April 2, 2007, reference 03, has become final. Benefits are withheld until the claimant has worked in and has been 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

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