

**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**

**ERIC J CRABB
6650 SE 5TH #25
DES MOINES IA 50315**

**RUAN TRANSPORT CORP
C/O TALX EMPLOYERS SERVICES
PO BOX 1160
COLUMBUS OH 43216 1160**

**Appeal Number: 05A-UI-02654-DWT
OC: 01/30/05 R: 02
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, 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:

Eric J. Crabb (claimant) appealed a representative's March 1, 2005 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Ruan Transport Corporation (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 March 30, 2005. The claimant participated in the hearing. Connie Weiss appeared on the employer's behalf. Based on the evidence, the arguments of the parties, 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 January 30, 2005. On March 1, 2005, a representative's decision was mailed to the claimant and employer. The decision indicated the claimant was not qualified to receive unemployment insurance benefits as of January 30, 2005, and that the decision was considered final unless a party appealed the decision on or before March 11, 2005.

The claimant received the representative's decision on March 2 or 3, 2005. At the fact-finding interview, a representative told the claimant that if he disagreed with the forthcoming decision, he had ten days to appeal the decision. Even though the decision informed the parties the decision was final unless an appeal was filed by March 11, 2004, the claimant concluded he had until March 14 to file the decision because he received the decision on March 2 or 3 and these days fell on a weekend. Since the March 1, 2005 decision stated that if the deadline for filing an appeal occurred on a weekend, the appealing party had until Monday to file an appeal, the claimant assumed he had until March 14, Monday to file his appeal. The claimant filed his appeal on March 14, 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 March 11, a Friday, 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 evidence establishes the claimant had a reasonable opportunity to file a timely appeal, but did not.

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. The representative's information that the claimant had ten days to appeal was correct, but the claimant incorrectly assumed the ten days started after he received the decision. Unfortunately, the claimant chose to disregard the information on the March 1 decision that expressly informed him he had to file an appeal on or before March 11, 2004. The claimant had no explanation as to why he did not file an earlier appeal. Since the claimant did not establish a legal excuse for filing a late appeal, the Appeals Section has no jurisdiction to make a decision on the merits of the appeal.

DECISION:

The representative's March 1, 2005 decision (reference 01) is affirmed. The claimant 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 his appeal. This means the claimant is disqualified from receiving unemployment insurance benefits as of January 30, 2005. 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/kjf