

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSE A CASTELAN
Claimant

APPEAL NO. 15A-UI-02350-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLMAN DYNAMICS CORP
Employer

OC: 01/04/15
Claimant: Appellant (1)

Section 96.5(2)a – Discharge
Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Jose Castelan filed an appeal from a representative's decision dated January 21, 2015 (reference 01) which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on March 25, 2015. The claimant participated. The employer participated by Ms. Christina Johnson, Human Resource Assistant.

ISSUE:

At issue in this matter is whether the appeal filed herein was timely.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: A disqualification decision was mailed to the claimant's last-known address of record on January 21, 2015. The claimant received the decision. The decision contained a warning that any appeal must be postmarked, faxed, or received by the Appeals Section by January 31, 2015. The appeal was not filed until February 20, 2015; which is after the date noticed on the disqualification decision.

Mr. Castelan delayed filing his appeal in this matter because he was in the process of attempting to be reinstated back to his position with the company and had been informed that an agreement had been reached to reinstate him. Because the claimant was going to be reinstated to his original job, he chose not to file an appeal from the adjudicator's determination; although he was aware of the decision made by the adjudicator and the due date for filing an appeal. Later, the claimant was temporarily laid off work and on February 20, 2015 Mr. Castelan filed a late appeal from the January 21, 2015 (reference 01) adjudicator's decision because he then did not want the adjudicator's decision to impede his ability to receive unemployment insurance benefits during the layoff.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.6-2 provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes the claimant failed to affect a timely appeal within the time. This was not due to any Agency error or misinformation or delay, or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the claimant has failed to timely appeal pursuant to Iowa Code Section 96.6(2), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the claimant's termination of employment. See Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979); Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979), and Pepsi-Cola Bottling Company v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

DECISION:

The decision of the representative dated January 21, 2015 (reference 01) is hereby affirmed. The appeal in this case is not timely. The decision of the representative shall stand and remain in full force and effect.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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