

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER R JOHNSON
Claimant

APPEAL NO: 11A-UI-08611-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JDR FARMS TRUCKING LLC
Employer

OC: 11/21/10
Claimant: Respondent (1)

Iowa Code § 96.6(2) – Appeal and Protest Timeliness

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's May 16, 2011 determination (reference 01) that held the claimant eligible to receive benefits and the employer's account subject to charge because employer had not filed a timely protest. The claimant participated in the hearing. The employer responded to the hearing notice, but was not available for the hearing. The employer did not respond to the message left by the administrative law judge. Based on the administrative record, and the law, the administrative law judge enters finds the employer's account remains subject to charge.

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 December 5, 2010. On May 16, 2011, a representative's determination was mailed to the claimant and employer. The determination held the claimant eligible to receive benefits and the employer's account subject to charge because the employer had not filed a timely protest. The determination informed the parties an appeal had to be filed or postmarked on or before May 26, 2011. The employer filed an appeal on June 29, 2011.

After the claimant's employment ended with this employer, he worked for another employer and earned more than ten times his weekly benefit amount between August 14, 2009, and November 21, 2010.

REASONING AND CONCLUSIONS OF LAW:

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's determination is mailed to the parties' last-known address, files an appeal from the determination; it is final. Benefits shall then be paid or denied in accordance with the representative's determination. 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 determinations must be filed within the time limit set by statute and the administrative law judge has no authority to review a determination 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 after the May 26, 2011 deadline for appealing expired.

The employer did not establish a legal excuse for filing a late appeal. 871 IAC 24.35(2). Since the appeal was not filed timely, the Appeals Section does not have legal jurisdiction to make a decision on the merits of the employer's appeal.

Since the claimant earned more than \$4260.00 in wages between August 14, 2009, and November 21, 2010, the outcome of this decision has no legal consequence on the claimant.

DECISION:

The representative's May 16, 2011 determination (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 jurisdiction to address the merits of the employer's appeal. This means the employer's account remains subject to charge. Since the claimant earned more than \$4260.00 in wages between August 14, 2009, and November 21, 2010, his eligibility to receive benefits is not affected by the outcome of this decision.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css