

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319**

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TYLER G BRADY	:	
	:	
Claimant,	:	HEARING NUMBER: 09B-UI-10724
	:	
and	:	
	:	EMPLOYMENT APPEAL BOARD
	:	DECISION
R & R INVESTORS INC	:	
	:	
Employer.	:	

**NOTICE**

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION: 96.6-2**

**DECISION**

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

**FINDINGS OF FACT:**

A representative issued a decision dated June 11, 2009 that concluded the Claimant was ineligible to receive benefits due to the receipt of severance benefits. The decision did not list the correct employer. The Claimant received the decision in a timely fashion but did not understand what severance was being referred to. It was not until an overpayment decision was issued assessing an overpayment for the weeks in question, and listing the correct employer that the Claimant understood the June 11 decision. The Claimant then filed a timely appeal of the overpayment decision.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code 96.6 provides:

2. *Initial determination.* ... 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.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive - but not conclusive - evidence of the date of mailing.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge and this Board have no authority to change the decision of representative if a timely appeal is not filed. Franklin v. Iowa Dept. Job Service, 277 N.W.2d 877, 881 (Iowa 1979). The ten day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. Messina v. Iowa Dept. of Job Service, 341 N.W.2d 52, 55 (Iowa 1983); Beardslee v. Iowa Dept. Job Service, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. E.g. Beardslee v. Iowa Dept. Job Service, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. Hendren v. Iowa Employment Sec. Commission, 217 N.W.2d 255 (Iowa 1974); Smith v. Iowa Employment Sec. Commission, 212 N.W.2d 471 (Iowa 1973). The question of whether the Employer has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that "the submission of any ... appeal... not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service."

The Claimant was understandably confused by the decision listing the wrong employer. We do appreciate the Administrative Law Judge's point that despite this confusion it should have been clear to the Claimant that a bad thing had happened and that he should follow the appeal directions. Yet, just what had happened remained unclear until the overpayment decision. We do not think that the June 11 decision was adequate notice to trigger the duty to appeal. Moreover, and somewhat facetiously, we might consider that the Claimant failed to timely appeal the decision concerning his severance payments from the wrong employer and argue that all this means is that those payments (totaling nothing) must be deducted from benefits. We find that the error of Workforce in misstating the caption in this case is the proximate cause of the late appeal. Thus the late appeal is excused under 871-24.35(2).

## DECISION:

The administrative law judge's decision dated August 13, 2009 is **REVERSED**. This matter is remanded to an administrative law judge in the Workforce Development Center, Appeals Section. The administrative law judge shall issue a decision on the merits of this case. The Administrative Law Judge may in the Administrative Law Judge's discretion conduct an

additional hearing if the judge deems it necessary to develop issues that were not adequately addressed in the first hearing because of the disposition of the issue of timeliness. After the hearing, if any, the administrative law judge shall issue a decision that provides the parties appeal rights.

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John A. Peno

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Elizabeth L. Seiser

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Monique F. Kuester

RRA/fnv