

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

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**MISTY M COLE**

Claimant

and

**RAFIKI HOTELS LLC**

Employer

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**HEARING NUMBER: 16B-UI-01962**

**EMPLOYMENT APPEAL BOARD  
DECISION**

**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:** 96.4-3, 24.22

**DECISION**

**UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE**

The Employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. With the following modification, the administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED** with the following **MODIFICATION**:

We modify the Administrative Law Judge's decision only to provide additional reason for finding the appeal timely. A somewhat obscure provision of the Iowa Code, once found, clearly applies and means that the appeal was indeed filed within the period provided for by law.

Iowa Code §4.1(34)(emphasis supplied) provides:

**In computing time**, the first day shall be excluded and the last included, **unless the last falls on Sunday**, in which case the time prescribed shall be extended so as to include the whole of the following Monday. However, **when by the provisions of a statute** or rule prescribed under authority of a statute, **the last day for** the commencement of an action or proceedings, the filing of a pleading or motion in a pending action or proceedings, or the **perfecting or filing of an appeal from the decision or award of a court, board, commission, or official falls on a Saturday, a Sunday**, a day on which the office of the clerk

of the district court is closed in whole or in part pursuant to the authority of the supreme court, the first day of January, the third Monday in January, the twelfth day of February, **the third Monday in February**, the last Monday in May, the fourth day of July, the first Monday in September, the eleventh day of November, the fourth Thursday in November, the twenty-fifth day of December, and the following Monday when any of the foregoing named legal holidays fall on a Sunday, and any day appointed or recommended by the governor of Iowa or the president of the United States as a day of fasting or thanksgiving, **the time shall be extended to include the next day which the office of the clerk of the court or the office of the board, commission, or official is open** to receive the filing of a commencement of an action, pleading or a motion in a pending action or proceeding, or the perfecting or filing of an appeal.

The decision appealed to the Administrative Law Judge was issued February 4, 2016. Ten days later was February 14, 2016 which was a Sunday. Thus the Claimant gets an extension until the next day. That was Monday February 15, 2016. But February 15, 2016 was the third Monday in February, 2016. There is no question that the claimant seeks to file an “appeal” from the “decision” of an “official” (the representative) and that “by the provisions of a statute” “the last day for...filing of [the] appeal...falls on... third Monday in February.” This being the case the statute provides that the time shall be extended until the next day that the “office of the official” is “open to receive the filing,” namely, Tuesday the 16<sup>th</sup> of February, 2016. As the Claimant did file an appeal on the 16<sup>th</sup> of February, the appeal is timely under the literal terms of the Code.

The Claimant submitted a written argument to the Employment Appeal Board. The Employment Appeal Board reviewed the argument. A portion of the argument consisted of additional evidence which was not contained in the administrative file and which was not submitted to the administrative law judge. While the argument and additional evidence were reviewed, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today’s decision.

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Kim D. Schmett

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Ashley R. Koopmans

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James M. Strohman