

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

NOAH M MINES
711 E NORTH ST
MADRID IA 50156

LINT VAN LINES INC
4549 DELAWARE AVE
DES MOINES IA 50313

Appeal Number: 06A-UI-02684-DWT
OC: 05/15/05 R: 02
Claimant: Respondent (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:

Lint Van Lines, Inc. (employer) appealed a representative's February 15, 2006 decision (reference 01) that concluded Noah M. Mines (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the employer did not file a timely protest. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 27, 2006. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. Naren Cunningham appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

FINDINGS OF FACT:

The claimant worked for the employer from December 8, 2003, through January 12, 2004. Although the claimant was scheduled to work after January 12, 2004, the claimant did not return to work or contact the employer again. Between January 12, 2004 and May 15, 2005, the claimant worked for another employer(s). The claimant earned at least ten times his weekly benefit amount of \$157.00 between January 12, 2004, and May 15, 2005. The claimant established a claim for unemployment insurance benefits during the week of May 15, 2005.

On May 23, 2005, the Department mailed a notice to the employer indicating the claimant had filed a claim for benefits and the maximum amount of money that could be charged against the employer's account. The employer received the notice of claim on May 24, 2005 and faxed the completed form to the Department on May 24, 2005. The Department did not have a record of receiving the employer's a completed protest.

On February 13, 2006, the employer received a statement of quarterly charges and learned for the first that its account had been charged \$500.73. On February 13, 2006, the employer wrote a letter to the Department indicating there was an error in charges against its account because the employer had previously protested any charges against its account.

On February 15, 2006, a representative's decision was issued holding the claimant was eligible to receive unemployment insurance benefits, and the employer's account was subject to charge because the employer had not filed a timely protest. The decision informed the employer the decision was final unless an appeal was filed on or before February 25, 2006. The employer received the representative's decision by February 20, 2006. Cunningham did not appeal immediately appeal on the employer's behalf because she wanted to talk to her supervisor before taking any further actions. The employer appealed the February 15 decision on February 28, 2006.

REASONING AND CONCLUSIONS OF LAW:

If the employer would have filed an appeal on or before February 25, 2006, this case would be simple because there would be no problem with the Appeals Section having legal jurisdiction to address the issue in this case. If the employer had a filed a timely appeal, the evidence indicates the employer filed a timely protest. As a result, the reasons for the claimant's January 12, 2004 employment separation could be reviewed to determine whether the employer's account was subject to or exempt from charge.

The law provides when an employer has not received a notice of claim, after the quarterly statement of charges has been mailed, the employer has 30 days to appeal to the Department for a hearing to determine the eligibility of a claimant to receive benefits. Iowa Code § 96.7-6. In this case, the employer acknowledges receiving the May 23, 2005 notice of claim. As a result, this statute does not apply.

Unless a 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 employer's appeal was filed one day after the deadline for appealing expired because February 25 was a Saturday so the employer had until February 27 to file an appeal.

The next question is whether the employer 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 employer had a reasonable opportunity to file a timely appeal, but did not.

The 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. Since the appeal was not filed timely, the Appeals Section does not have legal jurisdiction to make a decision on the merits of the appeal.

After the claimant worked for the employer but prior to establishing his claim for benefits, he earned ten times his weekly benefit amount from subsequent employment. As a result, there is no legal consequence to the claimant as a result of this decision.

DECISION:

The representative's February 15, 2006 decision (reference 01) is affirmed. The employer did not file a timely appeal. Therefore, the Appeals Section has no legal jurisdiction to address the merits of the employer's appeal. Therefore, the employer's account cannot be relieved from charge.

dlw/tjc