

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIANNE A MARTINEZ
Claimant

APPEAL NO. 17A-UI-07185-TNT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES MOINES HEALTH CENTER INC
Employer

OC: 06/19/16
Claimant: Respondent (1)

Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Des Moines Health Center, Inc., the employer, filed an appeal from a representative's decision dated April 13, 2017, reference 05, which held the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a telephone conference hearing was held on August 2, 2017. The claimant did not participate. The employer participated by Ms. Elizabeth Theill, Operations Manager.

ISSUE:

The issue is whether the employer filed a timely appeal.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds: A disqualification decision was mailed to the employer's last known address of record on April 13, 2017. The employer received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by April 23, 2017. The appeal was not filed until July 18, 2017, which is after the date noticed on the disqualification decision. The decision was forwarded to the company's Human Resource Department. Ms. Theill had no information about why the appeal was not filed timely by the employer.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6(2) provides, in pertinent part:

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. . . . 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 administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law 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 appeal was not timely filed 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) and *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 April 13, 2017, reference 05, decision is affirmed. Employer has failed to file a timely protest, and the decision of the representative shall stand and remain in full force and effect.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

rvs/rvs