

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RODNEY I BERGER
Claimant

APPEAL NO. 09A-UI-07822-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HILLCREST FAMILY SERVICES
Employer

OC: 04/19/09
Claimant: Appellant (1)

Section 96.5-2-a – Discharge
Section 96.6-2 – Timely Appeal

STATEMENT OF THE CASE:

Rodney I. Berger filed an appeal from an unemployment insurance decision dated May 15, 2009, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held June 15, 2009 with Mr. Berger participating. Julie Heiderscheit participated for the employer, Hillcrest Family Services. Exhibit D-1 was admitted into evidence.

ISSUE:

Has the claimant filed a timely appeal?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The decision from which Rodney I. Berger has appealed states that it would become final unless an appeal was postmarked by May 25, 2009 or received by the Agency by that date. May 25, 2009 was Memorial Day. Mr. Berger filed his appeal by fax on Wednesday, May 27, 2009.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the administrative law judge has jurisdiction to rule on the merits of this case. He does not.

Iowa Code section 96.6-2 gives an individual ten days from the date of a fact-finding decision to file an appeal. The statute goes on to say that if no appeal is filed within that time benefits shall be paid or denied in accordance with the decision. Elsewhere, the Code of Iowa grants an automatic extension to the next regular working day for any document that must be submitted where the last day for filing is a Saturday, Sunday or legal holiday. An appeal filed on Tuesday, May 26, 2009, thus, would be timely. Mr. Berger's appeal was filed on Wednesday, May 27, 2009. Additional time for filing an appeal may be granted if the delay was the fault of the

U.S. Postal Service or Iowa Workforce Development. See 871 IAC 24.35. The evidence does not establish that either the postal service or the Agency caused the delay in Mr. Berger's filing. Therefore, the administrative law judge concludes he has no jurisdiction to rule on the merits of the case.

DECISION:

The unemployment insurance decision dated May 15, 2009, reference 01, remains in effect. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

css/css