

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

ROOSEVELT SANDERS

Claimant,

and

BIERSCH INC

Employer.

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HEARING NUMBER: 10B-UI-11596

**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: 96.5-2-A, 96.6-2

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The Employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The majority of the Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The decision of the claim representative was mailed to the Claimant's last known address on July 26, 2010. That decision stated that it became final unless an appeal was postmarked by August 5, 2010 (a Thursday). The Petitioner signed and hand-delivered mailed his appeal on August 18, 2010, thirteen days late. (Ex. D-1). The Petitioner was out of town looking for work during the period to appeal. (Rec. at 5:24-40).

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."

These principles govern this matter - not the good cause rule which applies to late appeals to the Board. *C.f. Houlihan v. Employment Appeal Bd.*, 545 N.W.2d 863 (Iowa 1996)(15 day appeal deadline to Board extended for good cause under Board rule 3.1). The rules of Iowa Workforce Development do not give this Board the flexibility to extend the deadline for good cause. There is no indication that the delay in this case was caused by an error of Workforce or by the postal service. Since the requirements of rule 24.35(2) are not satisfied the Board is obliged to apply the ten day period and to reverse the administrative law judge.

This conclusion is bolstered by the fact that the Claimant's excuse does not even strike us as satisfying good cause. People sometimes take vacations, people sometimes travel on business, employers shut down over the holidays, and unemployed workers travel to look for work. We expect such persons to make some sensible arrangement for handling of important mail while they are out. The absence is known in advance and often for a predictable period of time. Arrangements to at least look for important mail can also be made in advance. Thus even if we were to apply a good cause standard, rather than the stricter jurisdictional one, still we would find the appeal untimely.

DECISION:

The administrative law judge's decision dated October 20, 2010 is **REVERSED**. The Employment Appeal Board concludes that the appeal to the Administrative Law Judge was untimely and that, as a result, there was no jurisdiction to entertain the Claimant's appeal. Accordingly, he is denied benefits until such time the Claimant has worked in and was paid wages for insured work equal to ten times the Claimant's weekly benefit amount, provided the Claimant is otherwise eligible. See, Iowa Code section 96.5(1)(g); Iowa Code section 96.5(2)"a".

The Board remands this matter to the Iowa Workforce Development Center, Claims Section, for a calculation of the overpayment amount based on this decision.

John A. Peno

Monique F. Kuester

Elizabeth L. Seiser

RRA/fnv