

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

DIRK G CARMAN

Claimant,

and

SO CO INC

Employer.

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HEARING NUMBER: 10B-UI-09276

**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 claimant 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**:

The Employment Appeal Board would modify the administrative law judge's decision by finding that the claimant's appeal was untimely.

871 IAC 26.4(2) provides:

An appeal from an initial decision concerning the allowance or denial of benefits *shall* be filed, by mail, facsimile or in person, *not later than ten calendar days*, as determined by the postmark or the date stamp, after the decision was mailed to the party at its last-known address...(Emphasis added.)

In addition, 871 IAC 24.35(2)"a" provides:

The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document 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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

The deadline for appeal was June 22, 2010, the same day the claimant received an appeal form from the agency. Yet, the claimant waited until a week later to actually file his appeal. There is no information to establish that the delay was due to division error or that the post office was at fault. Based on the information before us, we conclude that good cause was not established as to why the claimant's appeal was untimely. As such, the administrative law judge had no jurisdiction to hear this matter, and the claims representative's decision that denied benefits remains in effect.

Lastly, the employer 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 (documents) were considered, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision.

John A. Peno

Monique F. Kuester

AMG/fnv