

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HERCHEL E ANDERSON
Claimant

APPEAL NO: 11A-UI-00968-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRECISION LAWN CARE
Employer

**OC: 11/21/10
Claimant: Respondent (1)**

871 IAC 24.1(113)a – Layoff
871 IAC 24.28(6) – Prior Adjudication
871 IAC 24.35(2) – Appeal Delay
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The employer appealed a department decision dated January 13, 2011, reference 02, that held claimant was laid off on October 30, 2009, and benefits are allowed. A telephone hearing was held on February 24, 2011. The claimant participated. Richard Wales, Owner, participated for the employer. Employer Exhibit 1 was received as evidence.

Claimant and employer waived notice on whether the employment separation issue had been previously adjudicated.

ISSUES:

Whether the employer filed a timely appeal.

Whether claimant was laid off for lack of work.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The department mailed the decision to the employer's representative address of record on January 13, 2010 with an instruction the appeal deadline date is January 23 that is a Sunday. The employer requested his local workforce center to submit an appeal on or before January 24. The department representative faxed the appeal on January 25.

The employer laid off the claimant for lack of work on October 31, 2009. The department issued a decision dated November 23, 2009 that claimant was on a short-term lay-off effective November 1, and benefits were allowed. The employer did not appeal.

The claimant was off work in December 2009 when he was injured in a car accident. The employer is contesting unemployment benefits.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6-2 provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

871 IAC 24.35(2) provides:

(2) 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 department that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service or its successor.

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.

b. The department shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to department error or misinformation or delay or other action of the

United States postal service or its successor, the department shall issue an appealable decision to the interested party.

The administrative law judge concludes the employer filed a timely appeal.

The employer provided his appeal to a department representative in a timely manner to submit an appeal before the deadline that is extended to Monday, January 24, by operation of law. Apparently, the submission of claimant's appeal was not a priority for the department representative whom withheld it rather than to fax it in a timely manner.

871 IAC 24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

871 IAC 24.28(6) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(6) The claimant voluntarily left employment. However, there shall be no disqualification under Iowa Code section 96.5(1) if a decision on this same separation has been made on a prior claim by a representative of the department and such decision has become final.

The administrative law judge further concludes the department previously adjudicated the October 31, 2009 layoff issue in a November 2009 decision that became final when no appeal was final.

The department representative who issued the decision in this case failed to review the claimant record and note that a decision had been issued on the claimant's employment separation back in November 2009. Once the appeal period lapsed, the decision became final. The employer appeal letter confirms it laid off the claimant for lack of work.

The employer failed to bring to the attention of the department that it had subsequent claimant eligibility issues that it wanted to protest. The ALJ lacks jurisdiction to consider issues that have not been subject to department review and adjudication.

DECISION:

The department decision dated January 13, 2011, reference 02, is affirmed. The employer filed a timely appeal. The department decision that claimant was laid-off on October 30, 2009 has been previously adjudicated on November 23, 2009, reference 01, and it remains in force and effect. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

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