

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WAYNE A RICHMAN
Claimant

APPEAL NO. 07A-UI-01117-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LEON TRUE VALUE
Employer

OC: 06/13/04 R: 03
Claimant: Respondent (1)

Section 96.6(2) – Timeliness of Appeals

STATEMENT OF THE CASE:

DDB, Inc., doing business as Leon True Value, filed an appeal from a representative's decision dated August 6, 2006, reference 02, which allowed benefits to Wayne Richman. After due notice was issued, a hearing was held by telephone on February 15, 2007. Mr. Richman participated personally and offered additional testimony from Stephanie Mendenhall, CPA. The employer participated by Damon Boyd, Owner, and was represented by Angela Hill, Attorney at Law.

ISSUE:

At issue in this matter is whether DDB, Inc. filed a timely appeal concerning Mr. Richman's entitlement to job insurance benefits.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Richman and his wife, Janet Richman, owned a True Value hardware store that was sold to DDB, Inc., owned by Damon Boyd, on June 3, 2004. Neither of the Richmans were offered work by Mr. Boyd. Mr. Richman filed a claim for job insurance benefits effective June 13, 2004. A notice of claim was mailed to the store's address on June 16, 2004. Because it was addressed to the Richmans, Mr. Boyd did not open it and made arrangements for its delivery to them.

On May 19, 2005, a "Notice of Employer Status and Liability" was issued to DDB, Inc. advising that it had received a complete transfer of experience from the Richman's former unemployment account. The determination was not appealed within 30 days of its issuance. On November 22, 2005, DDB, Inc. was mailed a "Notice of Unemployment Insurance Contribution Rate" which indicated that unemployment benefits had been charged to its account in the second, third, and fourth quarters of 2004 and the first quarter of 2005. The notice further advised that the employer's contribution rate for 2006 would be 8.000 percent. There was no appeal filed within 30 days of the November 22, 2005 mailing date. The employer protested the contribution rate in a letter postmarked July 14, 2006. On August 6, 2006, a representative's decision was

mailed to DDB, Inc. allowing benefits to Mr. Richman. The employer did not appeal the determination by the August 16, 2006 due date.

REASONING AND CONCLUSIONS OF LAW:

The primary contention by DDB, Inc. was that it did not receive notification that Mr. Richman had received benefits charged to its account until June of 2006. It is true that the initial notice of claim mailed in June of 2004 was not directed to DDB, Inc. as Workforce Development had not yet been made aware of the change in ownership. However, DDB, Inc. received notice on November 22, 2005 that unemployment benefits had been charged to its account during the second, third, and fourth quarters of 2004 and the first quarter of 2005. The charges to the employer's account ranged from \$808.00 to \$5,656.00. Since the store has only two employees, the notice should have alerted the employer to at least question Workforce Development as to why there were charges during those quarters.

The employer had the opportunity to contest Mr. Richman's entitlement in August of 2006. A decision was mailed to DDB, Inc. on August 6, 2006 allowing benefits to Mr. Richman. The employer did not appeal by the August 16, 2006 appeal deadline as required by Iowa Code section 96.6(2).

The appeal deadlines for the decisions referred to herein were clear and conspicuous. The employer has not established any good cause for not complying with the statutory deadlines. The fact that DDB, Inc. did not receive the initial notice of claim does not alter the fact that the employer had at least two occasions thereafter to appeal Mr. Richman's eligibility for benefits. Because the employer did not file timely appeals and did not establish good cause for not doing so, the administrative law judge lacks jurisdiction to adjudicate the separation issue. Inasmuch as there was no timely appeal from the successorship determination, DDB, Inc. is liable for benefits paid to Mr. Richman pursuant to Iowa Code section 96.7(2)b.

DECISION:

The representative's decision dated August 6, 2006, reference 02, is hereby affirmed as there was no timely appeal. Benefits are allowed, provided Mr. Richman satisfies all other conditions of eligibility. Benefits were properly charged to DDB, Inc. as a successor employer.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs