

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**PAUL J REICKS
1422 SIMON
CARROLL IA 51401**

**AMERICAN HOME SHIELD CORP
c/o EMPLOYERS UNITY INC
PO BOX 749000
ARVADA CO 80006-9000**

**Appeal Number: 04A-UI-02604-B4T
OC: 01-25-04 R: 01
Claimant: Respondent (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

An appeal was filed on behalf of the employer from an unemployment insurance decision dated February 17, 2004, reference 01, that held, in effect, Paul J. Reicks was discharged from his employment with American Home Shield Corporation on January 23, 2004 for no disqualifiable reason and unemployment insurance benefits were allowed, provided the claimant was otherwise eligible. The employer's account may also be charged for benefits paid.

A telephone conference hearing was scheduled and held on March 30, 2004, pursuant to due notice. Paul J. Reicks participated. Sean Boyle responded to participate as a witness but was not available and his testimony was waived by the claimant for the timeliness of appeal issue that was undertaken. Malia Maples, hearing representative with Employers Unity, Inc.,

represented the employer. Valerie Chitty, Claims Specialist, and Karen Minor, Mailroom Manager, participated as witnesses on behalf of American Home Shield Corporation during the hearing held with respect to the timeliness of appeal issue.

Ann Fitzpatrick, Brent Baumhower and Julie Schmidt were available to participate as witnesses with respect to issues other than the timeliness of appeal issue.

Official notice was taken of the unemployment insurance decision, bearing reference 01, together with the pages attached thereto (18 pages in all). Employer's Exhibit 1, consisting of 19 pages, was admitted into evidence.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that:

Timeliness of Appeal Issue:

Paul J. Reicks was employed with American Home Shield Corporation from January 25, 2004 through January 27, 2004. The claimant was discharged from his employment on January 23, 2004.

The claimant filed an initial claim for benefits having an effective date of January 25, 2004. Subsequently, following a fact-finding interview, a decision of the representative was mailed to both parties of record which included Employers Unity, Inc. on February 17, 2004, reference 01. Said decision contained a caveat or warning that required an appeal to be postmarked by February 27, 2004 or received by Iowa Workforce Development Appeals Section by that date. An examination of Exhibit 1 discloses that the appeal was filed on behalf of the employer by Employers Unity fax on March 9, 2004 as shown by page 1 and other documents attached to Exhibit 1.

The appeal was, therefore, filed on March 8, 2004 which is after the date noticed on the disqualification decision.

The evidence presented discloses that certain decisions may not be received in appropriate fashion by any party. The testimony, however, established also that numerous individuals with Employers Unity, Inc. acted on behalf of the employer and a clear justification that the decision was not received in a timely fashion is not believable. Although Employers Unity has made an effort to handle all incoming mail with the greatest care, the record does not justify a finding that the employer did not receive the decision under consideration in a timely fashion through the United States Postal Department.

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.

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 evidence of the date of mailing. Gaskins v. Unempl. Comp. Bd. of Rev., 429 A.2d 138 (Pa. Comm. 1981); Johnson v. Board of Adjustment, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. Franklin v. IDJS, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. Beardslee v. IDJS, 276 N.W.2d 373, 377 (Iowa 1979); see also In re Appeal of Elliott 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. Hendren v. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the appellant did have a reasonable opportunity to file a timely appeal.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code Section 96.6-2, and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979) and Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979).

The evidence in this record does not justify a finding that a timely appeal has been filed on behalf of the employer and the decision of the representative should remain in full force and effect.

DECISION:

The decision of the representative dated February 17, 2004, reference 01, is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect. Paul J. Reicks is eligible to receive unemployment insurance benefits, provided he meets all other eligibility requirements, and the employer's account may be charged for benefits paid.

tjc/b