

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOUGLAS J BALLARD
Claimant

APPEAL NO. 07A-UI-07429-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PIONEER HI-BRED INTERNATIONAL INC
Employer

**OC: 11/05/06 R: 03
Claimant: Appellant (1)**

Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Douglas J. Ballard (claimant) appealed a representative's July 17, 2007 decision (reference 01) that concluded he was eligible to receive benefits for the weeks ending June 23 and 30, but was disqualified from receiving benefits as of July 1, 2007, because he had voluntarily quit his employment for reasons that do not qualify him to receive benefits as of July 1, 2007. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 16, 2007. The claimant participated in the hearing.

The day before the hearing, August 15, 2007, the employer's representative, TALX, faxed a written request to continue the hearing because the employer's witness had previously taken August 16, 2007, off from work. Since the hearing notices were mailed on August 3, 2007, the employer's request for a postponement was denied because a continuance request had not been made in a timely manner.

Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant file a timely appeal or establish a legal excuse for filing a late appeal?

FINDINGS OF FACT:

The claimant started working for the employer on September 1, 2000. The employer hired the claimant to work as a part-time employee, who was not eligible for any benefits. The claimant, however, usually worked 40 or more hours a week. The claimant kept applying for a full-time position with the employer.

On June 15, 2007, the claimant learned the employer was going to announce which employees had been hired for five full-time positions. The claimant had applied for these positions, but the employer had not yet interviewed him. The claimant talked to the plant manager to see if he was being considered for one of the full-time jobs. The plant manager told the claimant he would

not be hired as a full-time employee because of issues with his work credibility. The claimant became upset and gave the plant manager his two-week notice.

The claimant did not feel well after talking to the plant manager and left work early. The next day, the employer told the claimant his job was over and he did not need to work another two weeks.

The claimant reopened his claim for unemployment insurance benefits during the week of June 17, 2007. On July 17, 2007, a representative's decision was mailed to the claimant and employer. This decision held the claimant was eligible to receive benefits for the weeks he was willing to work, but the employer did not allow him to work. The decision also held the claimant disqualified from receiving benefits as of July 1, 2007. The decision informed the parties an appeal had to be filed on or before July 27, 2007.

The claimant received the July 17, 2007 decision by July 19. He did not agree with the decision and planned to appeal. The claimant misplaced or lost the July 17 decision. After the claimant misplaced the decision, he did not remember the deadline date in which to file an appeal. The claimant filed his appeal at his local Workforce office on August 2, 2007.

REASONING AND CONCLUSIONS OF LAW:

Unless the claimant or other interested party, after notification or within ten calendar days after a representative's decision is mailed to the parties' last-known address, files an appeal from the decision, the decision is final. Benefits shall then be paid or denied in accordance with the representative's decision. Iowa Code § 96.6-2. 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 Iowa Supreme Court has ruled that appeals from unemployment insurance decisions must be filed within the time limit set by statute and the administrative law judge has no authority to review a decision if a timely appeal is not filed. Franklin v. IDJS, 277 N.W.2d 877, 881 (Iowa 1979); Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979). In this case, the claimant's appeal was filed after the July 27, 2007 deadline for appealing expired.

The next question is whether the claimant had a reasonable opportunity to file 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 evidence establishes the claimant had a reasonable opportunity to file a timely appeal, but did not.

The claimant's failure to file a timely appeal was not due to any Agency error or misinformation or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) would excuse the delay in filing an appeal. When the claimant could not find the decision he received on July 19, he failed to take a reasonable course of action by immediately contacting his local Workforce office to find out the date in which he was required to appeal. Since the appeal was not filed timely, the Appeals Section has no legal jurisdiction to make a decision on the merits of the claimant's appeal.

DECISION:

The representative's July 17, 2000 decision (reference 01) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. The Appeals Section has no legal jurisdiction to address the merits of the claimant's appeal. This means the claimant

remains disqualified from receiving unemployment insurance benefits as of July 1, 2007. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw