

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSIE R WESBROOK

Claimant

APPEAL NO. 08A-UI-11180-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RUSS WELLNER CONSTRUCTION

Employer

**OC: 04/08/07 R: 03
Claimant: Appellant (1)**

Section 96.5-3-a – Refusal of Recall

Section 96.6-2 – Timely Appeal

STATEMENT OF THE CASE:

Jessie R. Wesbrook filed an appeal from an unemployment insurance decision dated October 17, 2008, reference 02, that disqualified him for benefits upon a finding that he had refused recall to suitable work with Russ Wellner Construction. After due notice was issued, a telephone hearing was held December 18, 2008 with Mr. Wesbrook participating. Owner Russ Wellner participated on his own behalf. Agency Exhibit D-1, the claimant's appeal letter and envelope, were admitted into evidence.

ISSUE:

Has the claimant filed a timely appeal?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The decision from which Jessie R. Wesbrook has appealed states that it would become final unless an appeal was postmarked by October 27, 2008 or received by the Agency by that date. Mr. Wesbrook was hospitalized at the time that the decision was issued. He was released from the hospital at the beginning of November. His mother completed the appeal letter for him on November 14, 2008. The letter was postmarked, however, on November 24, 2008.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the appeal can be accepted as timely. The administrative law judge concludes that it cannot.

Iowa Code section 96.6-2 gives a party only ten days from the date of a fact-finding decision to file an appeal. This time may be extended, however, if extenuating circumstances exist. See 871 IAC 24.35. The question becomes whether the individual responded in a reasonable amount of time after learning of the existence of the adverse decision.

The evidence establishes that Mr. Wesbrook learned of the decision at the beginning of November, that the appeal letter was prepared on November 14, 2008 and that the appeal was postmarked on November 24, 2008. The filing date of an appeal filed via the U.S. Postal Service is the postmark date, not the date of completion. See Pepsi-Cola Bottling Company of Cedar Rapids v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990). The administrative law judge concludes that the appeal is untimely because an unreasonably long period of time elapsed between Mr. Wesbrook learning of the adverse decision and the appeal being postmarked. Because the appeal is untimely, the administrative law judge has no jurisdiction to rule on the merits of the case.

DECISION:

The unemployment insurance decision dated October 17, 2008, reference 02, has become final and remains in effect. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs