BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

JESUS BECERRA	:	
	:	HEARING NUMBER: 08B-UI-01361
Claimant,	:	
	:	
and	:	EMPLOYMENT APPEAL BOARD
	:	DECISION
TYSON FRESH MEATS INC	:	
Employer.		

N O T I C E

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-1

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE DENIED

The claimant appealed this case to the Employment Appeal Board. The parties were notified that timeliness of the appeal was at issue. The members of the Employment Appeal Board reviewed the entire record.

FINDINGS OF FACT:

The decision of the administrative law judge was dated and mailed on February 26, 2008. The claimant appealed the decision of the administrative law judge to the Employment Appeal Board in a letter dated March 31, 2008, and faxed April 1, 2008. Good cause for the late filing was not shown. The appeal was not filed in a timely manner.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.6(3) (1999) provides:

> The parties shall be duly notified of the administrative law judge's decision, together with the administrative law judge's reasons for the decision, which is the final decision of the

department, unless within fifteen days after the date of the notification or mailing of such decision, further appeal is initiated pursuant to this section.

Section 486 IAC 3.1(2) of the Iowa Administrative Code provides:

> Form and time of appeal. A party aggrieved by a decision of the administrative law judge may appeal to the Employment Appeal Board within 15 days from the date of the decision. The appeal shall state the grounds for appeal. The appeal shall be addressed to Employment Appeal Board, Lucas State Office Building, Fourth Floor, Des Moines, Iowa 50319. The appeal may also be filed at any office maintained by the workforce development department which processes claims for unemployment insurance. Appeals may also be filed by facsimile transmission (fax). If the appeal if filed by fax, the original copy shall be mailed to the employment appeal board. The date of the appeal is the date of the fax transmission.

According to 871 IAC 24.35(1), if a United States Postal Service postmark is present that postmark will be used as the filing date of the appeal. If there is no postmark, a postal meter mark will be used to establish the filing date. If neither is available the date of the appeal is the date the appeal was written.

This rule has been construed in Pepsi Cola v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990). The court stated that the United States Postal Service postmark is governing when both a meter mark and postmark are present on the envelope.

The claimant did not file a timely appeal to the Employment Appeal Board. The Employment Appeal Board is without jurisdiction to review the merits of the case. Franklin v. Iowa Department of Job Service, 277 N.W.2d 877 (Iowa 1979).

The Employment Appeal Board rule at 486 IAC 3.1(16) provides a late appeal shall be dismissed unless good cause for the delay in filing is shown. Good cause was not shown in this case.

DECISION:

The Employment Appeal Board lacks jurisdiction to rule on the merits of the appeal. The administrative law judge's decision dated February 26, 2008, which denied benefits, is final.

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Elizabeth L. Seiser

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Mary Ann Spicer

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John A. Peno

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