

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

JERRY L MAY
1649 STATE AVE
HARDY IA 50543

EATON CORPORATION
c/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-01442-DWT
OC: 12/26/04 R: 02
Claimant: Appellant (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:

Jerry L. May (claimant) appealed a representative's January 27, 2005 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Eaton Corporation (employer) would not be charged because the claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 24, 2005. The claimant participated in the hearing. The employer failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which the employer's representative/witness could be contacted to participate in the hearing. As a result, no one represented the employer. 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 in February 2004. Before the claimant accepted this employment, the employer told him employees worked seven days a week. The employer was in the process of planning for employees to work six days a week.

In October 2004, the claimant quit because working seven days a week was too much for him. He only wanted to work five days a week.

During the week of December 26, 2004, the claimant filed a claim for unemployment insurance benefits after he was laid off from Kiefer Built. On January 27, 2005, a representative's decision was mailed to the claimant and employer. This decision held the claimant was not qualified to receive unemployment insurance benefits as of December 26, 2004.

The claimant received the representative's decision by February 4 or 5, 2005. On February 7, 2005, the claimant tried to obtain Kiefer Built human resources representative's assistance, but this person was not at work. The claimant wanted this person's advice on how to appeal the decision. After the claimant talked to Kiefer Built's human resources representative, he filed his appeal by faxing it on February 10, 2005.

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 deadline for appealing expired. Since February 6 fell on a Sunday, the claimant had until February 7 to file his appeal. He did not file his appeal until February 10 or three days late.

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. Since the claimant did not establish a legal excuse for filing a late appeal, the Appeals Section has no jurisdiction to make a decision on the merits of the appeal.

Even if the claimant had filed a timely appeal, he quit his employment for reasons that do not qualify him to receive unemployment insurance benefits.

DECISION:

The representative's January 27, 2005 decision (reference 01) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. Therefore, the Appeals Section has no jurisdiction to address the merits of the claimant's appeal. This means the claimant is disqualified from receiving unemployment insurance benefits as of December 26, 2004. 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.

dlw/pjs