

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

MICHAEL K SMITH  
713 S MADISON AVE  
OTTUMWA IA 52501

DEARBORN ROOFING INC  
BECKER ROOFING COMPANY  
327 CHURCH ST  
OTTUMWA IA 52501

Appeal Number: 06A-UI-00160-AT  
OC: 11-28-04 R: 03  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.6-2 – Timely Appeal

STATEMENT OF THE CASE:

Michael K. Smith filed an appeal from an unemployment insurance decision dated May 19, 2005, reference 01, which disqualified for benefits following his separation from the employment with Dearborn Roofing, Inc. Due notice was issued for a telephone hearing to be held January 23, 2006. Mr. Smith did not provide a telephone number at which he could be contacted. Under these circumstances, it was unnecessary to take testimony from the employer's witness.

FINDINGS OF FACT:

Having examined all matter of record, the administrative law judge finds: The decision from which Michael K. Smith has appealed states that it would become final unless an appeal was postmarked by May 29, 2005, or received by the agency by that date. Mr. Smith's appeal was filed by mail. The postmark on the envelope bears that date of December 10, 2005. The letter of appeal does not indicate that Mr. Smith had not received the decision in May.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the administrative law judge has jurisdiction to rule on the merits of this case. He does not

Iowa Code section 96.6-2 gives a party ten days from the date of a fact-finding decision to file an appeal. If the final day for an appeal falls on a Saturday, Sunday, or legal holiday, the time for filing the appeal is automatically extended to the next working day. The Supreme Court of Iowa has ruled that the time limit in the statute is jurisdictional. See Franklin v. Iowa Department of Job Service, 277 N.W.2d 877, 881 (Iowa 1979). In the absence of a timely appeal, the administrative law judge has no jurisdiction to rule on the merits of a case.

The evidence here establishes that Mr. Smith did not file an appeal until December of 2005. Without evidence indicating a legally valid reason for the delay in appealing, the administrative law judge concludes that the appeal is untimely and that the judge has no jurisdiction to rule on the merits of the case.

DECISION:

The unemployment insurance decision dated May 19, 2005, reference 01, 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.

kjw/kjw