

**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**

**MARVIN R VON SPRECKEN  
PO BOX 20  
WYOMING IA 52362**

**TRIANGLE AGRI SERVICES CORP  
C/O WILLIAM TENLEY  
19799 HWY 151  
MONTICELLO IA 52310-7703**

**Appeal Number: 04A-UI-00235-DWT  
OC 05/19/02 R 03  
Claimant: Respondent (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 are 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:

Triangle Agri Service Corporation (employer) appealed a representative's June 20, 2002 decision (reference 01) after the employer received its recent unemployment insurance tax rate. The tax rate increased substantially because the employer's account had been charged for benefits paid to Marvin R. Von Sprecken (claimant). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 27, 2004. The claimant participated in the hearing. Bill Tenley, a major stockholder, and Miles Loy, the president, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer file a timely appeal or establish a legal excuse for filing a late appeal from a June 20, 2002 representative's decision?

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits during the week of May 19, 2002. Loy participated in a fact-finding interview in early or mid-June 2002. The employer sent in documents to support the employer's assertion the claimant was not qualified to receive unemployment insurance benefits. On June 20, 2002 a representative's decision was mailed to the claimant and employer. This decision indicated the claimant was qualified to receive unemployment insurance benefits as of May 19, 2002, and the employer's account could be charged for benefits paid to the claimant.

Loy saw the decision. Even though he did not agree with the decision, he concluded it would not do any good to appeal to the next level and did not. The employer received statements of quarterly charges in 2002 and 2003 that reflected the charges against the employer's account. The employer's secretary reviewed these statements and did not share them with others. During this time the employer monitored the secretary's work because of some competency issues, but did not notice the statement of quarterly charges.

After the secretary retired, the employer received notice of the increase in its unemployment insurance tax rate. The employer learned the cause of the substantial increase was due to the charges against the employer's account based on the benefits the claimant had drawn against the employer. On December 23, 2003, the employer appealed because the employer had never discharged the claimant as the June 20, 2002 decision stated.

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 employer's appeal was filed more than a year after the deadline for appealing expired.

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

The employer'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 employer did not file a timely appeal or

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.

DECISION:

The representative's June 20, 2002 decision (reference 01) is affirmed. The employer did not file a timely appeal or establish a legal excuse for filing a late appeal from this decision. As a result, the Appeals Section has no jurisdiction to address the merits of the employer's appeal. This means the claimant is qualified from receiving unemployment insurance benefits as of May 19, 2002, and the employer's account is subject to charge.

dlw/b