

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

KIM D DOMINO  
111 WESTVIEW AVE  
YETTER IA 51433

WIEDERHOLT TRUCKING COMPANY  
2885 – 330<sup>TH</sup> ST  
LAKE VIEW IA 51450

Appeal Number: 04A-UI-10002-HT  
OC: 08/08/04 R: 01  
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 - Timeliness

STATEMENT OF THE CASE:

The claimant, Kim Domino, filed an appeal from a decision dated August 26, 2004, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on October 7, 2004. The claimant participated on his own behalf. The employer, Wiederholt Trucking Company (Weiderholt), participated by Owner Randy Wiederholt.

The parties waived their right to notice on the issue of the timeliness of the appeal. Exhibit D-1 was admitted into the record.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, finds that: A disqualification decision was mailed to the claimant's last known address of record on August 26, 2004. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by September 5, 2004. The appeal was not filed until September 15, 2004, which is after the date noticed on the decision.

The claimant offered some testimony on the timeliness issue but declined to continue with the hearing before all evidence could be taken. He stated he had sent an appeal on August 30, 2004, and contacted the Appeal Section on September 7, 2004, to ask if the appeal had been received. When he was told it had not been received, he faxed Exhibit D-1. However, that appeal letter was faxed eight days after the Appeal Section notified him the first appeal letter had not been received and he offered no explanation for the delay before declining to continue.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

The claimant was notified on September 7, 2004, his original appeal letter was not received. However, the claimant declined to give sufficient testimony on the first appeal letter. In addition, no explanation was given as to why there was a delay of eight days before a second appeal was faxed. The claimant has the burden of proof to establish he filed a timely appeal and has not met this burden. The appeal is not timely.

DECISION:

The decision of the representative dated August 26, 2004, reference 01, is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect. The claimant is disqualified for unemployment benefits.

bgh\s