

IOWA DEPARTMENT OF INSPECTIONS & APPEALS
Division of Administrative Hearings
Wallace State Office Building
Des Moines, Iowa 50319

Appeal Number: 17IWD007

Respondent (5)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

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.

**NEBRASKA FURNITURE MART, INC.
PAULA BUCK
700 S. 72ND ST.
OMAHA, NE 68114**

STATE CLEARLY

ALI TUPPER, FIELD AUDITOR

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.

JOE BERVID, IWD
CARIE O'BRIEN, IWD
NICHOLAS OLIVENCIA, IWD
RYAN KNUDSON, IWD
ROBERT ROJAS, ATTY

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 the Department. 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)

October 25, 2016

(Dated and Mailed)

Iowa Code section 96.7(4) – Timeliness of Appeal

STATEMENT OF THE CASE

IWD transmitted the appeal file to the Iowa Department of Inspections and Appeals, Division of Administrative Hearings to schedule a contested case hearing. A contested case hearing was held before Administrative Law Judge David Lindgren on October 25, 2016. Field Auditor Ali Tupper appeared on behalf of IWD. Attorney Robert Rojas

appeared and represented Nebraska Furniture Mart (NFM). Witness Stacy Harbaugh testified for NFM. NFM exhibits 1 and 2 were admitted into the record without objection.

ISSUES

Whether there was good cause for the failure of NFM to file a timely appeal.

FINDINGS OF FACT

On July 27, 2016, IWD issued a notice to NFM informing it of the decision that an employer-employee relationship existed between itself and Lloyd Couchman. The notice informed NFM that “any appeal must be within 30 days” and that “the decision will be final if you do not file an appeal in thirty days from the date of this notice.” Thirty days from July 27 would have been August 26.

On September 9, 2016 IWD received from Robert Sheffield, an attorney representing NFM, a request to appeal the July 27, 2016 decision. This appeal was transmitted to the Department of Inspections and Appeal for Hearing with the following issues certified:

Whether there was good cause for Nebraska Furniture Mart, Inc.’s failure to file a timely appeal. Second, if an employer-employee relationship existed between Nebraska Furniture Mart and Lloyd Couchman, who performed services for Nebraska Furniture Mart, Inc.

At the hearing on this appeal, NFM Employee Relations Manager Stacy Harbaugh explained that she only became aware of the July 27, 2016 decision toward the end of August. That was a very busy time for her and she also knew there was a related unemployment insurance hearing proceeding between NFM and Lloyd Couchman. She was confused about the two proceedings and essentially conflated the two. No appeal was taken within 30 days of the first decision because she mistakenly believed that was part of the second proceeding.

REASONING AND CONCLUSIONS OF LAW

An initial employer liability determination including employer status and liability, assessments, rate of contributions, successorships, worker's status, and all questions regarding coverage of a worker or group of workers may be appealed to the department of workforce development for a hearing before an administrative law judge with the department of inspections and appeals. 871 Iowa Administrative Code 23.52(1). Employer or other interested party shall have 30 days from the mailing date printed on the notice to appeal the determination. 871 IAC 23.52(4).

Furthermore, Iowa Code section 96.7(4) provides, in pertinent part, that

The department shall initially determine all questions relating to the liability of an employing unit or employer, including the amount of contribution, the contribution rate, and successorship. A copy of the initial determination shall be sent by regular mail to the last address, according to the records of the department, of each affected employing unit or employer.

The affected employing unit or employer may appeal in writing to the department from the initial determination. An appeal shall not be entertained for any reason by the department unless the appeal is filed with the department within thirty days from the date on which the initial determination is mailed. If an appeal is not so filed, the initial determination shall with the expiration of the appeal period become final and conclusive in all respects and for all purposes.

Absent from either of these authorities is a “good cause” exception for the requirement that an appeal must be taken within 30 days from the date on which the initial determination is mailed. NFM maintains there is such a good cause exception. Although I am not convinced that Iowa law provides for such an exception, I would still conclude that there was no good cause for failing to timely appeal the decision in this case. Good cause has been defined in a different context to mean

a sound, effective, truthful reason, something more than an excuse, a plea, apology, extenuation, or some justification for the resulting effect. The movant must show his failure to defend was not due to his negligence or want of ordinary care or attention, or to his carelessness or inattention. He must show affirmatively he did intend to defend and took steps to do so, but because of some misunderstanding, accident, mistake or excusable neglect failed to do so.

Dealers Warehouse Co. v. Wahl & Associates, 216 N.W.2d 391, 394 (Iowa 1974).

Here, the reason offered by Ms. Harbaugh for failing to take an appeal within 30 days can best be characterized as negligence or carelessness. Had she read the July 27 decision, the appeal requirement was plainly stated. NFM’s failure was not due to excusable neglect. The appeal was untimely and must be dismissed.

DECISION

The appeal is untimely and should be dismissed. IWD’s decision is therefore **AFFIRMED**.

dbl