

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ZACHERY V GAY
Claimant

MACAPA LOGISTICS LLC
Employer

APPEAL 22A-UI-05888-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/16/22
Claimant: Respondent (1)**

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Macapa Logisitics LLC, the employer/appellant, filed an appeal from the February 10, 2022, (reference 03) unemployment insurance decision that allowed benefits because the employer's protest was not filed on time. The parties were properly notified of the hearing. A telephone hearing was held on April 15, 2022. The employer participated through April Meyer, director of operations. Mr. Gay participated personally. The administrative law judge took official notice of the administrative record. Department's Exhibit 1 were admitted as evidence.

ISSUES:

Is the employer's protest filed on time?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to the employer at correct address on January 19, 2022. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by January 31, 2022.

The employer received the decision. Ms. Meyer did not know when the employer received the notice. The business owner completed the notice, signed it, but did not date it. Ms. Meyer testified that the employer usually submits the notice the day it receives the notice. Ms. Meyer testified that the business owner mailed the notice to IWD. IWD received the notice on February 3, 2022. Department's Exhibit 1. No envelope or postmark date is attached to the notice, and the notice does not contain a stamp from IWD showing a postmark date, which is IWD's usual practice when a notice is submitted via mail.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer's protest of the January 19, 2022 notice was not filed on time.

Iowa Code § 96.6(2) provides, in pertinent part: “[u]nless 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.”

Iowa Admin. Code r. 871-24.35(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

(b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

In this case, the employer provided no evidence about when the employer received the notice, or when it submitted the notice to IWD. The fact that the employer usually submits notices on the day it receives the notices does not establish that that is what the employer did in this case. In the absence of a postmark date or a date of completion (dated entered on the document), the administrative law judge concludes the notice was submitted on February 3, 2022. February 3, 2022 was after the January 31, 2022 deadline. The employer's protest was not filed on time.

DECISION:

The employer's protest of the January 19, 2022 notice was not filed on time. The February 10, 2022, (reference 03) decision is AFFIRMED.



Daniel Zeno
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April 20, 2022
Decision Dated and Mailed

dz/mh