

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PABLO X HERNANDEZ
Claimant

PHOENIX RISING INC.
Employer

APPEAL 20A-UI-12869-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/16/19
Claimant: Respondent (1)**

Iowa Code § 96.6(2) – Filing – Timely Appeal and Timely Protest
Iowa Admin. Code r. 871-24.35 – Filing

STATEMENT OF THE CASE:

Employer filed an appeal from the October 6, 2020 (reference 03) unemployment insurance decision that found employer's protest untimely. The parties were properly notified of the hearing. A telephone hearing was held on December 14, 2020, at 11:00 a.m. Claimant did not participate. Employer participated through Michelle Fichter, General Manager and Owner. No exhibits were admitted. Official notice was taken of the administrative record. The record was kept open until 5:00 p.m. on December 15, 2020 for employer to submit proposed exhibits or additional evidence via written statement. No exhibits or statements were received from employer.

ISSUES:

Whether employer filed a timely appeal.
Whether employer filed a timely protest.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to employer at the correct address on October 6, 2020. Employer received the decision but does not recall the date it was received. Mail from Des Moines, Iowa is typically received in Council Bluffs, Iowa within a week.

The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by October 16, 2020. Employer appealed the decision online on October 18, 2020. The appeal was received by Iowa Workforce Development on October 18, 2020. Employer provided no reason for the delay in submitting its appeal to Iowa Workforce Development.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that employer's appeal was untimely.

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).

Employer submitted its appeal after the appeal deadline. Employer has not established that its delay in submitting its appeal was due to any agency error or misinformation or delay of the United States Postal Service. Employer's appeal was not timely. Therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal.

DECISION:

Employer's appeal was not timely. The October 6, 2020 (reference 03) unemployment insurance decision is affirmed. The administrative law judge has no authority to change the decision of the representative.



Adrienne C. Williamson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

December 30, 2020
Decision Dated and Mailed

acw/mh