

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

DALLAS S THOMPSON
Claimant

BREUER EYE CARE LLC
Employer

APPEAL NO. 23A-UI-01660-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/18/22
Claimant: Respondent (1)**

Iowa Code Section 96.6(2) – Timeliness of Appeal
Iowa Code Section 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

On February 14, 2023, the employer filed a late appeal from the October 14, 2022 (reference 03) decision that allowed benefits to the claimant, provided she met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the deputy's conclusion the employer's protest was untimely and, therefore, could not be considered. After due notice was issued, a hearing was held on March 6, 2023. Dallas Thompson (claimant) did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Dr. Joni Breuer represented the employer. Exhibit 1, the mailed appeal packet and envelope, was received into evidence. The administrative law judge took official notice of the following Agency administrative records: the reference 03 decision and the notice of claim/protest received and processed by Iowa Workforce Development.

ISSUE:

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Breuer Eye Care, L.L.C. (employer) is located on Grand Avenue in Spencer, Iowa. The employer uses a third-party accounting firm, Williams & Company, for accounting and payroll. The accounting firm located in Spencer and maintains a Spencer P.O. Box mailing address. The accounting firm's P.O. Box is the address of record on file with Iowa Workforce Development.

On September 26, 2022, Iowa Workforce Development mailed a notice of claim concerning claimant Dallas Thompson to the address of record, the accounting firm's P.O. Box in Spencer. The notice of claim was delivered to the address of record in a timely manner. The notice of claim included a an October 6, 2022 deadline for the employer's response to the notice of claim. The accounting firm forwarded the notice of claim to employer in a timely manner. On

September 30, 2022, the employer's office manager, Kayla Carrillo, added the employer's protest information to the notice of claim form and signed to certify the accuracy of the information. The signature is dated September 30, 2022. On the morning of October 7, 2022, someone from the employer's business faxed the notice of claim form to Iowa Workforce Development. The faxed protest indicates it was faxed at 9:21 a.m. on October 7, 2022 from NW Vision Care. Iowa Workforce Development received the protest on October 7, 2022 and marked it late.

On October 14, 2022, Iowa Workforce Development mailed the October 14, 2022 (reference 03) decision to the employer's address of record, the accounting firm's P.O. Box. The weight of the evidence indicates the decision was delivered to the P.O. Box in a timely manner, prior to the deadline for appeal. The decision allowed benefits to the claimant, provided she met all other eligibility requirements, and held the employer's account could be charged for benefits, based on the deputy's conclusion the employer's protest was untimely and, therefore, could not be considered. The reference 03 decision stated the decision would become final unless an appeal was postmarked by October 24, 2022 or was received by the Appeal Section by that date. The decision included clear and concise instructions for filing an appeal. The accounting firm did not alert the employer to the reference 03 decision. Neither the employer nor the accounting firm took steps to file an appeal by the October 24, 2022 appeal deadline. The employer advises that the accounting firm shuffled responsibility for the employer's account in late 2022 and that the employer received notice in December that that a different person at the accounting firm had been assigned to the employer's account.

On February 9, 2023, Iowa Workforce Development mailed a quarterly State of Charges to the employer's address of record. On the afternoon of February 13, 2023, the accounting firm alerted the employer to the document. On February 13, 2022, Dr. Breuer and Ms. Carrillo drafted an appeal letter. On February 14, 2022, Ms. Carrillo mailed the appeal letter and attachments. The mailed correspondence is postmarked February 14, 2022. The Appeals Bureau received the appeal on February 17, 2023.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The ten-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

An appeal submitted by mail is deemed filed 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 was 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. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

The evidence in the record establishes that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. 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). One question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert 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).

No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 871-24.35(2)(c).

The evidence in the record establishes an untimely appeal from the October 14, 2022 (reference 03) decision. The evidence establishes that the reference 03 decision was delivered to the employer's address of record, the accounting firms P.O. Box, in a timely manner, which provided the employer, including the employer's agent, a reasonable opportunity to file an appeal by the October 24, 2022 appeal deadline. Due to a breakdown in communication between the accounting firm and the employer, neither party filed an appeal by the October 24, 2022 appeal deadline. The appeal was filed on February 14, 2023, the postmark date on the mailed appeal. There was unreasonable delay in filing the appeal. The late filing of the appeal was not attributable to the Iowa Workforce Development error or misinformation or delay or other action of the United States Postal Service. There is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was untimely, the administrative law judge lacks jurisdiction to disturb the reference 03

decision regarding the timeliness of the protest. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The employer's appeal from the October 14, 2022 (reference 03) decision was untimely. The decision that allowed benefits to the claimant, provided she met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the deputy's conclusion the employer's protest was untimely and, therefore, could not be considered, remains in effect.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in dark ink on a light-colored background.

James E. Timberland
Administrative Law Judge

March 7, 2023
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

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.

AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or 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.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.