

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**MIGUEL IGLESIA**

Claimant

**APPEAL NO. 10A-UI-16267-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PETRO-CHEMICAL INSULATION INC**

Employer

**OC: 09/12/10**

**Claimant: Respondent (1)**

Section 96.6-2 – Timeliness of Protest

Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Petro-Chemical Insulation, Inc. (employer) appealed a representative's November 9, 2010 decision (reference 02) that concluded Miguel Iglesia (claimant) was qualified to receive unemployment insurance benefits and the employer's account might be charged because the employer's protest was not timely filed. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 13, 2011. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. Sandra Ignacio appeared on the employer's behalf. During the hearing, Exhibits A-1 and A-2 were entered into evidence. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Was the employer's appeal timely or are there legal grounds under which it can be treated as timely?

Was the employer's protest timely or are there legal grounds under which it can be treated as timely?

**FINDINGS OF FACT:**

The representative's decision was mailed to the employer's official address of record, its corporate address in California, on November 9, 2010. The employer's corporate office received the decision on November 12, 2010. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by November 19, 2010, a Friday. The appeal was not filed until it was faxed on November 29, 2010, which is after the date noticed on the disqualification decision. The reason for the delay was that the corporate office did not send the representative's decision to the office in which Ms. Ignacio worked in Indiana as assistant safety and human resources coordinator until November 22; she then submitted the appeal on November 29.

Likewise, the underlying notice of claim had been sent to the employer's official address of record, its corporate address in California, on September 15, 2010. The employer's corporate office received the notice on September 20, 2010. The notice contained a warning that a protest must be

postmarked or received by the Claims Section by September 27. The protest was not filed until it was faxed on October 5, 2010, which is after the date it was due. The reason for the delay was that the corporate office did not send the notice of claim to the Indiana office until on or by October 4; she then signed the protest, and faxed it on October 5.

#### **REASONING AND CONCLUSIONS OF LAW:**

If a party fails to make a timely appeal of a representative's decision and there is no legal excuse under which the appeal can be deemed to have been made timely, the decision as to the merits has become final and is not subject to further review. Iowa Code § 96.6-2 provides that unless the affected party (here, the employer) files an appeal from the decision within ten calendar days, the decision is final and benefits shall be paid or denied as set out by the decision.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the 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). Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa 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). The question in this case then 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).

A party does not have a reasonable opportunity to file a timely appeal if the delay is due to Agency error or misinformation or to delay or other action of the United States postal service. 871 IAC 24.35(2). Failing to read and follow the instructions for filing an appeal is not a reason outside the appellant's control that deprived the appellant from having a reasonable opportunity to file a timely appeal. The appellant did have a reasonable opportunity to file a timely appeal. A delay in communication within the employer's organization a business decision for which the employer, not the claimant, must bear the consequences.

The administrative law judge concludes that the appellant's failure to file a timely appeal within the prescribed time was not due to a legally excusable reason so that it can be treated as timely. The administrative law judge further concludes that because the appeal was not timely, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal, regardless of whether the merits of the appeal would be valid. See Beardslee, supra; Franklin, supra; and Pepsi-Cola Bottling Company v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

Even if the administrative law judge could get past the employer's failure to file a timely appeal, the employer did not file a timely protest. The law provides that all interested parties shall be promptly notified about an individual filing a claim. The parties have ten days from the date of mailing the notice of claim to protest payment of benefits to the claimant. Iowa Code § 96.6-2. As discussed above, another portion of Iowa Code § 96.6-2 dealing with timeliness of an appeal from a

representative's decision states an appeal must be filed within ten days after notification of that decision was mailed, and those provisions have been found to be mandatory and jurisdictional. Beardslee, supra.

The administrative law judge considers the reasoning and holding of the Beardslee court controlling on the portion of Iowa Code § 96.6-2 which deals with the time limit to file a protest after the notice of claim has been mailed to the employer. Compliance with the protest provisions is jurisdictional unless the facts of a case show that the notice was invalid. Beardslee, 276 N.W.2d 373, 377 (Iowa 1979); see also In re Appeal of Elliott, 319 N.W.2d 244, 247 (Iowa 1982). Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), protests are considered filed when postmarked, if mailed. Messina, supra. The question in this case thus becomes whether the employer was deprived of a reasonable opportunity to assert a protest in a timely fashion. Hendren, supra; Smith, supra. The record shows that the employer did have a reasonable opportunity to file a timely protest. A delay in communication within the employer's organization is a business decision for which the employer, not the claimant, must bear the consequences.

The employer has not shown that the delay for not complying with the jurisdictional time limit was due to department error or misinformation or delay or other action of the United States Postal Service. Since the employer filed the protest late without any legal excuse, the employer did not file a timely protest. Since the administrative law judge concludes that the protest was not timely filed pursuant to Iowa Code § 96.6-2, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the protest and the reasons for the claimant's separation from employment, regardless of the merits of the employer's protest. See Beardslee, supra; Franklin, supra; and Pepsi-Cola Bottling Company, supra.

**DECISION:**

The representative's November 9, 2010 decision (reference 02) is affirmed. The appeal in this case was not timely, and the decision of the representative has become final and remains in full force and effect. The protest in this case was not timely. Benefits are allowed, provided the claimant is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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