

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**ORIE N SCHULTE**  
Claimant

**CUSIC MASONRY LLC**  
Employer

**APPEAL NO. 19A-UI-09364-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/30/19**  
**Claimant: Respondent (1)**

Iowa Code § 96.6-2 – Timeliness of Appeal  
Iowa Code § 96.6-2 – Timeliness of Protest

**STATEMENT OF THE CASE:**

Employer filed an appeal from the November 14, 2019, reference 03, decision that granted benefits. After due notice was issued, a hearing was held on December 23, 2019. The claimant did participate. The employer did participate through Brian Cusic, Lupe Guerro, and Tyler Erenberger.

**ISSUES:**

Whether the appeal is timely?

Whether the employer's protest is timely?

**FINDINGS OF FACT:**

The administrative law judge, having considered all of the evidence in the record, finds that: The claimant's notice of claim was mailed to the employer's address of record on July 5, 2019. Said Notice was sent to an address of record held by IWD. The notice of claim contains a warning that any protest must be postmarked or returned not later than ten days from the initial mailing date. The employer did not effect a protest until November 13, 2019, which is after the ten-day period had expired. Employer stated that the Notice was not received as it had been sent to an old address. Employer stated that the address had been changed years ago and employer further stated that employer has received many documents from IWD since that date at their new address.

A decision was then mailed to the employer's last known address of record on November 14, 2019 as employer did not get the address changed on the day when he filed the Protest. Employer stated that he did receive the decision, but not until after the time period had expired for him to file a timely appeal of the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by November 25, 2019. The appeal was not filed until November 26, 2019, which is after the date noticed on the disqualification decision.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6(2) provides, in pertinent part:

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. . . . 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.

The ten calendar days for appeal begin 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 Iowa Admin. Code r. 871-26.2(96)(1) and Iowa Admin. Code r. 871-24.35(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 the Protest was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file Protests 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 thus becomes whether the appellant was deprived of a reasonable opportunity to assert a Protest 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). The record shows that the appellant did not have a reasonable opportunity to file a timely Protest. Employer stated that they had received documentation from IWD at their new (for 3 years) address. As such, employer did not necessarily have reason to know if an address change was affected for one section of IWD that it would not effectively change the address from all mailings received from IWD.

The administrative law judge concludes that failure to file a timely Protest within the time prescribed by the Iowa Employment Security Law was due to an Agency error or misinformation pursuant to Iowa Admin. Code r. 871-24.35(2). The administrative law judge further concludes that the Protest was therefore timely filed.

The record in this case also shows that more than ten calendar days elapsed between the mailing date of the decision 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). The 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). The record shows that the appellant did have a reasonable opportunity to file a timely appeal.

In this matter, the employer contacted IWD concerning another matter on or before November 13. It was at this time that employer and the IWD representative knew that employer hadn't received the previously filed Original Claim. Employer at that time filed his Protest. After receiving the Protest, IWD representatives sent out a decision in this matter. As employer had not ensured the address was his new, and not his old address, the decision was also sent to the old address. Employer stated that for some reason the decision got forwarded to his new address, but it was a day late for employer to file a timely appeal of the decision.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2), but rather was a result of ongoing negligence on the part of the employer. AS employer found out on or before November 13, 2019 that he hadn't received the Original Claim, employer then had an affirmative duty to ensure that his address was correct with IWD. This was not done as the new decision was sent to the wrong address too. The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code Section 96.6-2, and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See, *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

**DECISION:**

The November 14, 2019, reference 03, decision is affirmed. Although the Protest in this case is deemed timely, the appeal in this case was not timely, and the decision of the representative remains in effect.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

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