

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JAMES J. JACKSON**  
Claimant

**APPEAL 22IWDUI0093**

**Appeal No. 22A-UI-01470**

**DIVERSIFIED SERVICES FOR INDUSTRY**  
Employer

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/21/21  
Employer: Appellant (2)**

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Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The employer, Diversified Services for Industry, filed an appeal to an IWD decision issued on December 10, 2021. The parties were properly notified of the hearing. A telephone hearing was held on March 7, 2022. The employer appeared by representative Myranda Schipporeit. The claimant, James Jackson, did not appear. The entire administrative file, including the decision under review, was admitted into the record, and the matter is now fully submitted.

**ISSUES:**

Whether the appeal is timely.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the Administrative Law Judge finds:

On or about November 2, 2021, Claimant's employment with Employer ended. (12/10/21 Decision) Thereafter, Claimant filed for unemployment insurance benefits. (Id.) On November 24, 2021, IWD mailed a Notice of Claim to Employer, and in that letter, it stated Employer had until December 6, 2021 to protest the granting of benefits. (Notice of Claim) The Employer faxed a protest to IWD on December 6, 2021. (Protest) The Employer has submitted a fax status document indicating the protest was successfully sent via fax on December 6, 2021 at 3:25pm. (Fax confirmation) There is nothing in the record from IWD confirming receipt of the protest. The only indication that the protest was late is the IWD decision issued on December 10, 2021 which indicates the fax was received on December 7, 2021. (Decision)

Employer appealed, and at the hearing, its witness testified it faxed the protest on December 6, 2021. The fax went through successfully as evidence by the fax confirmation documentation.

**REASONING AND CONCLUSIONS OF LAW:**

"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 issuance of the notice of the filing of the claim to protest payment of benefits to the claimant." Iowa Code § 96.6(2). A presumption exists the

Department mailed a decision on the date listed on the decision "unless otherwise indicated by the facts," and an individual is deemed to have filed the appeal on the date it was mailed "as shown by the postmark." 871 Iowa Administrative Code § 24.35§ (1)-(3). The Iowa Supreme Court has held that compliance with the appeal deadline is mandatory and jurisdictional unless the facts of a case show that the notice was invalid. Beardslee v. IDJS, 276 N.W.2d 373, 377 (Iowa 1979).

In this case, the record shows IWD issued the Notice of Claim on November 24, 2021, and any protest was due by December 6, 2021. There is no time stamped copy of the Employer's protest in this record. The only evidence that the protest was untimely is the finding in IWD's December 10, 2021 decision indicating the protest was received via fax on December 7, 2021. However, the Employer has provided its fax confirmation that the protest was successfully submitted on December 6, 2021 at 3:25pm. Further, testimony in the record from the Employer's representative confirms the protest was successfully submitted via fax on December 6, 2021. Accordingly, the IWD decision is REVERSED.

**DECISION:**

The December 10, 2021 (Reference 01) decision is REVERSED.



Emily Kimes-Schwiesow  
Administrative Law Judge

March 23, 2022  
Decision Dated and Mailed

cc: James Jackson (by first class mail)  
Diversified Services for Industry (by first class mail)  
Natali Atkinson, IWD (by email)  
Joni Benson, IWD (by email)

**Case Title:** JACKSON V. DIVERSIFIED SERVICES FOR INDUSTRY  
**Case Number:** 22IWDUI0093  
**Type:** Order

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Emily Kimes-Schwiesow", written in a cursive style.

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Emily Kimes-Schwiesow, ALJ