

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TOBY E CHAMPAGNE**  
Claimant

**APPEAL NO. 17A-UI-09891-TNT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TUCKER STAFFING LLC**  
Employer

**OC: 08/27/17**  
**Claimant: Respondent (1)**

Section 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Tucker Staffing, LLC, the employer, filed an appeal from a representative's decision dated September 14, 2017, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a hearing was held by telephone on October 12, 2017. Claimant participated. Employer participated by Mr. Jason Bailey, Company President, Mr. Fran Ratchford, Office Manager, Ms. Patricia Elgas, Office Assistant and Mr. Munaaj Shakil, Bookkeeper.

**ISSUE:**

Whether the appeal filed by the employer was timely.

**FINDINGS OF FACT:**

The administrative law judge, having considered all of the evidence in the record, finds that: a disqualification letter was mailed to the employer's last known address of record on September 14, 2017. The employer received the decision. The decision contains a warning that any appeal must be postmarked or received by the Appeals Section by September 24, 2017. The warning further informed the parties that if the due date falls on a Saturday, Sunday or legal holiday, the appeal period would be extended to the next working day. The appeal was not filed until September 28, 2017 which is after the date notice on the disqualification decision.

The employer's appeal in this matter was forwarded by the company's bookkeeper by facsimile which was sent to the Appeals Section on Wednesday, September 27, 2017 at 16:48.

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.

Iowa Admin. Code r. 871-24.35(1) provides:

Date of submission and extension of time for payments and notices.

(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 by any means other than the United States postal service on the date it is received by the division.

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 unemployment compensation board of review*, 421 Atlantic 2nd 38 (pacomm. 1981) and *Johnson v Board of Adjustment* 239 NW 2nd 873, 92alr 3rd 304 (Iowa 1976).

Pursuant to Iowa Administrative Code r.871-24.23(1) appeals are considered filed when postmarked if mailed. If transmitted by any other means other than the United States Postal Service, the appeal is filed on the day it is received by the Division.

The record in this case shows that more than ten calendar days lapsed 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 representative's decision 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 the 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.

The administrative law judge concludes that the 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 by the United States Postal Service pursuant to 871.IA C24.35(2). 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); *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

**DECISION:**

In the representative's decision dated September 14, 2017, reference 01, is affirmed. The appeal in this case was not timely and the decision of the representative remains in effect.

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Terry P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

tn/scn