

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHAEL L ROGERS
Claimant

PORTER MOVING COMPANY LLC
Employer

APPEAL 18A-UI-07597-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/24/17
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

Porter Moving Company, LLC (employer) filed an appeal from the February 1, 2018, reference 04, unemployment insurance decision that found the protest untimely and allowed benefits. A hearing was held on August 3, 2018, pursuant to due notice, and was consolidated with the hearing for appeal 18A-UI-07598-SC-T. Michael L. Rogers (claimant) did not respond to the hearing notice and did not participate. The employer participated through Operations Manager John Davis. The Department's Exhibits D1 through D4 were received.

ISSUES:

Is the employer's appeal timely?

Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The claimant filed his claim for benefits effective December 24, 2017. He had separated from the employer in November 2016. The notice of claim was mailed to the employer on December 27, 2017 and contained a warning that any protest needed to be filed by January 8, 2018. (Exhibit D1) During November and December 2017, the employer was moving locations. Its mail is sent to a post office box, but during the move some of the mail collected from the post office box was misplaced during the move in boxes or on desks. On January 24, 2018, Operations Manager John Davis responded to the notice of claim. He explained that due to an unusually busy holiday season, the employer did not have adequate time to return the protest. (Exhibit D1) The employer normally receives its mail from Des Moines within two to three days.

On February 1, 2018, an unemployment insurance decision, reference 04, was mailed to the employer's address of record. The decision contained a warning that an appeal must be filed by February 11, 2018. Davis did not receive the unemployment insurance decision; however, he does not believe it was due to a failure to deliver to the employer's post office box, but likely due to the move or overlooked during the busy season. The employer filed an appeal to the

decision on July 13, 2018, following receipt of the July 6, 2018 Statement of Charges for the first quarter of 2018.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that employer's appeal is untimely. Even if the employer's appeal was timely it has failed to protest response within the time period prescribed by the Iowa Employment Security Law.

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

Filing – determination – appeal.

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 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. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

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 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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 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 employer's disorganization during a move and busy season is not good cause for the failure to file a timely appeal. The employer's 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).

Even if the appeal had been timely filed, the protest to the claimant's claim for benefits was not timely filed for the same reasons. The employer's disorganization during a move and busy season is not good cause for the failure to file a timely protest to the claimant's claim for benefits. The employer's failure to file a timely protest 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).

DECISION:

The February 1, 2018, reference 04, unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn