

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LYNN M SMITHSON
Claimant

THE VIEWS OPERATOR A LLC
Employer

APPEAL NO. 20A-UI-02228-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/02/20
Claimant: Respondent (1)

Iowa Code § 96.6-2 – Timeliness of Appeal
Iowa Code § 96.6-2 – Timeliness of Protest
Iowa Code § 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Employer filed an appeal from the February 28, 2020, reference 06, decision that granted benefits. After due notice was issued, a hearing was held on April 24, 2020. The employer did participate through Tracy Sherzer. Employer's Exhibits 1-4 were admitted to the record. Claimant failed to respond to the hearing notice and did not participate.

ISSUES:

Whether the appeal is timely?

Whether the employer's protest is timely?

Whether claimant is overpaid unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision was mailed to the employer's last known address of record on February 28, 2020. Employer did receive the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by March 9, 2020. The decision contained specific address and email information wherein employer was to file the appeal. On March 5, 2020 employer sent in an appeal to an address different than the address noted to file an appeal. Said appeal was not received by the Appeals Bureau in a timely fashion. Employer then filed a subsequent appeal online. The appeal was not filed until March 12, 2020, which is after the date noticed on the disqualification decision.

Employer received a Notice of Claim on or around February 4, 2020. Employer responded to the Notice on February 7, 2020, but in the response indicated that claimant had never shown up for work. This was found to be in error by IWD, who had specific information as to wages earned by claimant working for employer. The Notice of Claim indicates that the responder is

certifying that information provided is correct. Employer was notified of this error and sent in a new Protest on February 25, 2020, outside of the 10 days allowed for filing a Protest.

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).

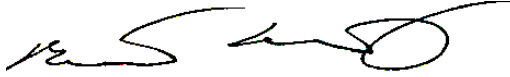
Pursuant to rules Iowa Admin. Code r. 871-26.2(96)(1) and Iowa Admin. Code r. 871-24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed with the correct agency. 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.

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). 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 February 28, 2020, reference 06, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.



Blair A. Bennett
Administrative Law Judge

April 27, 2020
Decision Dated and Mailed

bab/scn