

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**ZAC L ALLISON**  
Claimant

**MID-STATE DISTRIBUTING COMPANY**  
Employer

**APPEAL 20A-UI-06052-CL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/27/19  
Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

On June 5, 2020, the employer filed an appeal from the May 17, 2019, (reference 01) unemployment insurance decision that allowed benefits based on an untimely protest. The parties were properly notified about the hearing. A telephone hearing was held on July 15, 2020. Claimant did not register for the hearing and did not participate. Employer participated through executive vice president of operations Diane Hedden. Chief financial officer and Phillip Beland observed.

**ISSUES:**

Is the appeal timely?  
Was the employer's protest timely?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: On May 17, 2019, Iowa Workforce Development mailed a reference 01 unemployment insurance decision allowing benefits to employer's last address of record. The decision warned an appeal was due by May 27, 2019. Employer received the decision. Employer did not appeal the decision.

On August 9, 2019, Iowa Workforce Development mailed a statement of charges for the second quarter of 2019 to employer's last address of record. Employer received the statement. The statement included charges for claimant's unemployment insurance benefits. Employer did not appeal the charges.

On May 8, 2020, Iowa Workforce Development mailed a statement of charges for the first quarter of 2020 to employer's last address of record. Employer received the statement. The statement included charges for claimant's unemployment insurance benefits. On June 1, 2020, employer filed an appeal.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the employer's appeal is untimely.

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 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 administrative law judge concludes that failure to follow the clear written instructions 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 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 person in charge of unemployment insurance documents for employer at the time the decisions and statements were mailed to employer by Iowa Workforce Development did not testify at the hearing. The administrative law judge finds that person dropped the ball on employer's behalf. It is unlikely that employer did not receive the decisions and statements of charges from IWD while that person was in charge, but that employer began receiving documents from IWD after that person left employment. Employer had a reasonable opportunity to appeal the decision, but the person in charge of doing so on employer's behalf failed to act. Therefore, the appeal cannot be accepted as timely.

The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from unemployment insurance 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 administrative law judge concludes that the appeal was not timely filed pursuant to Iowa Code § 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. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979).

**DECISION:**

The May 17, 2020, (reference 01) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.



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Christine A. Louis  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

July 24, 2020

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Decision Dated and Mailed

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**NOTE TO EMPLOYER:** To become a SIDES E-Response participant, you may send an email to [iwd-sidesinfo@iwd.iowa.gov](mailto:iwd-sidesinfo@iwd.iowa.gov). To learn more about SIDES, visit <http://info.uisides.org>.