

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KATHLEEN A FRANK**  
Claimant

**APPEAL NO. 19A-UI-02070-TN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE CORNUCOPIA LLC**  
Employer

**OC: 10/07/18**  
**Claimant: Respondent (1)**

Section 96.6(2) – Timeliness of Appeals  
Section 96.6(2) – Timeliness of Protest

**STATEMENT OF THE CASE:**

The Cornucopia, LLC, the employer, filed an appeal from a representative's unemployment insurance decision dated November 28, 2018, reference 03, which held the claimant, Kathleen A. Frank, eligible to receive unemployment insurance benefits. After due notice was provided, a telephone conference hearing was held on March 29, 2019. Although duly notified, the claimant did not participate. The employer participated by Mr. Graham Watkins, Company Owner. Department Exhibit D-1 was admitted into the hearing record.

**ISSUES:**

The issues are whether the employer filed a timely appeal from the fact-finder's unemployment insurance decision dated November 28, 2018, reference 03 and whether the employer filed a timely protest on a the claim of Kathleen A. Frank.

**FINDINGS OF FACT:**

The administrative law judge, having considered all of the evidence in the record, finds that: An employment insurance decision on the claim of Kathleen A. Frank was mailed to the employer's last known address of record on November 28, 2018. The employer received the decision within ten days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by December 8, 2018. The appeal was not filed until March 10, 2019, which is after the date noticed on the unemployment insurance decision.

Mr. Watkins received the decision allowing benefits to Ms. Frank, but failed to note the portion of the decision that states "this decision becomes final unless an appeal is postmarked by 12/08/18, or received by Iowa Workforce Development Appeals Section by that date." Mr. Watkins had little experience in dealing with unemployment insurance matters, it appears that Mr. Watkins believed that the response that he had submitted on November 21, 2018 protesting that Kathleen A. Frank's claim for unemployment insurance benefits was sufficient. Although the decision itself provides a telephone number to contact Iowa Workforce Development customer service with any questions about the decision, Mr. Watkin's did not call the customer service number with any questions.

Mr. Watkins later filed the appeal from the November 28, 2018, reference 03 decision after receiving advice from another source. Because the appeal from the unemployment insurance decision was after the date notice on the unemployment insurance decision, the determination was made that it was not timely.

The Cornucopia, LLC received the claimant's notice of claim by the U.S. Postal Service at the employer's address of record within ten days after it was mailed to the employer's address of record on October 9, 2018. The notice of claim contained a warning that any protest must be postmarked, faxed or returned by the due date set forth on the notice, which was October 19, 2018. The notice of claim was received at the employer's place of business at a timely fashion prior to the deadline for protest. Mr. Watkins was unfamiliar with protesting the claim for benefits, and elected to contact a third party for business advice on the matter. The employer's protest was sent by facsimile to Iowa Workforce Development on November 21, 2018 at 2:28 p.m. Because the employer's protest was not received within the ten day time limit, benefits were allowed to the claimant and the employer's unemployment insurance account were subject to charging.

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 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.

Iowa Code § 96.6-2 provides in pertinent part:

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

Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 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 of the decision allowing benefits to Kathleen A. Frank 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. 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 Cornucopia, LLC, 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 Cornucopia, LLC, the employer did have a reasonable opportunity to file a timely appeal. Sufficient information was provided on the decision itself informing the employer the necessity to file the appeal by December 8, 2018 and providing a telephone number for the employer to call with any questions.

Because the employer's appeal from the unemployment insurance decision dated November 28, 2018, reference 03 was not timely, the decision made by Iowa Workforce Development that the employer had not filed a timely protest on Kathleen A. Frank's claim for benefits, the decision became final by operation of law. Benefits were paid to the claimant and the employer's account was chargeable. The employer's account was charged because the employer did not file a protest on the claim within ten days as required by law, and the decision finding that the employer had not filed a timely protest then became final by operation of the law, when the employer failed to file an appeal from that November 28, 2018, reference 03 decision within ten days.

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 871 IAC 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 representative's unemployment insurance decision dated November 28, 2018, reference 03, is hereby 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