

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ARTHUR AGUAYO-DAVALOS**  
Claimant

**EXODUS DIRECT LLC**  
Employer

**APPEAL 24A-UI-01611-SN-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/31/23**  
**Claimant: Respondent (1)**

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Iowa Code § 96.6(2) - Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer, Exodus Direct LLC, filed a timely appeal from the January 29, 2024, reference 01, decision that granted benefits and found the protest untimely. After due notice was issued, a hearing was held on March 4, 2024, at 2:00 p.m. The claimant did not participate. The employer participated through Claims Specialist Dustin Woodward. The employer was represented by Yuliana Rincon, an unemployment insurance representative. Exhibits D-1, D-2 and D-3 were received into the record. Official notice was taken of the agency records.

**ISSUES:**

The issue is whether the employer's protest is untimely?

Whether the employer's appeal is untimely? Whether there were circumstances beyond its control such that extension of the appeal period is warranted?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

The employer began using Employer's Edge on February 14, 2022.

The claimant's notice of claim was mailed to the employer's address of record, 2054 Vista Parkway Suite 300 in West Palm Beach Florida 33411, on January 8, 2024. The employer's MyIowaUI.gov account shows this as the address of record for tax correspondence.

The employer's agent, Employer's Edge, received the notice of claim on January 24, 2024. The notice of claim read in pertinent part, "Protest forms submitted to Iowa Workforce Development must be postmarked or faxed by the due date shown above." The due date written on the notice of claim was January 18, 2024. (Exhibit D-3)

The following section of the findings of fact displays the information necessary to resolve the timeliness of appeal issue:

The employer sent its notice of claim response by facsimile on January 24, 2024. On its protest, the employer wrote, "Please see this response as timely as this form was sent to the incorrect address. Please direct future mail to: Employer's Edge PO Box 351567 Westminster, Colorado 80035." It reported the claimant separated to take other employment on April 6, 2023.

A disqualification decision was mailed to claimant's last known address of record at 2054 Vista Parkway Suite 300 in West Palm Beach Florida 33411 on January 29, 2024.

The employer's agent, Employer's Edge, did not receive the decision until February 9, 2024. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by February 8, 2024. (Exhibit D1) The appeal was not filed until February 9, 2024, which is after the date noticed on the disqualification decision. (Exhibit D2)

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

The administrative law judge finds the employer's appeal was otherwise timely. He further finds the employer's protest was not timely filed and there were no circumstances outside of its control such that extension of the protest period is warranted to preserve its due process rights.

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 issuance of the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. 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 issued, 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.

The administrative law judge finds the delay regarding the employer's appeal is not attributable to it because it provided a corrected address on the protest it filed. Iowa Workforce Development's decision to still send it to 2054 Vista Parkway Suite 300 in West Palm Beach Florida 33411 delayed its receipt and is attributable to the agency.

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Iowa Admin. Code r. 871-24.8(2) provides:

Notifying employing units of claims filed, requests for wage and separation information, and decisions made.

24.8(2) Responding by employing units to a notice of the filing of an initial claim or a request for wage and separation information and protesting the payment of benefits.

a. The employing unit which receives a Form 655317, Notice of Claim, or Form 680221, Request for Wage and Separation Information, must, within ten days of the date of the notice or request, submit to the department wage or separation information that affects the individual's rights to benefits, including any facts which disclose that the individual separated from employment voluntarily and without good cause attributable to the employer or was discharged for misconduct in connection with employment.

b. The employing unit may protest the payment of benefits if the protest is postmarked within ten days of the date of the notice of the filing of an initial claim. In the event that the tenth day falls on a Saturday, Sunday or holiday, the protest

period is extended to the next working day of the department. If the employing unit has filed a timely report of facts that might adversely affect the individual's benefit rights, the report shall be considered as a protest to the payment of benefits.

c. If the employing unit protests that the individual was not an employee and it is subsequently determined that the individual's name was changed, the employing unit shall be deemed to have not been properly notified and the employing unit shall again be provided the opportunity to respond to the notice of the filing of the initial claim.

d. The employing unit has the option of notifying the department under conditions which, in the opinion of the employing unit, may disqualify an individual from receiving benefits. The notification may be submitted electronically.

- (1) The Notice of Separation, Form 600154, must be postmarked or received before or within ten days of the date that the Notice of Claim, Form 655317, was mailed to the employer. In the event that the tenth day falls on Saturday, Sunday or holiday, the protest period is extended to the next working day of the department. If a claim for unemployment insurance benefits has not been filed, the Notice of Separation may be accepted at any time. [Emphasis added]

In addressing an issue of timeliness of an appeal under that portion of this Code section, the Iowa Supreme Court held that this statute prescribing the time for notice of appeal clearly limits the time to do so, and that compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979). The administrative law judge considers the reasoning and holding of that court in that decision to be controlling on this portion of that same Iowa Code section which deals with a time limit in which to file a protest after notification of the filing of the claim has been mailed.

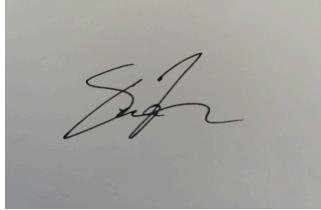
The employer filed its protest after the due date on the notice of claim. As a result, the employer has the burden of showing circumstances beyond its control led to the delay.

Generally, extending the protest period is reasonable when circumstances beyond the control of party would deny them due process such as non-receipt or a delay in receipt of mail due circumstance beyond the party's control. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

In this case, the employer cannot meet this burden because neither witness could provide information regarding when it attempted to change the address after February 14, 2022. MyIowaUI.gov still shows the address of record at 2054 Vista Parkway Suite 300 in West Palm Beach Florida 33411. Benefits are granted, provided the claimant is otherwise eligible for benefits.

**DECISION:**

The January 29, 2024, reference 01, decision is AFFIRMED. The employer's protest is untimely. There are not reasonable grounds to find the employer's protest otherwise timely. Benefits are granted, provided the claimant is otherwise eligible.



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Sean M. Nelson  
Administrative Law Judge II  
Iowa Department of Inspections & Appeals  
Administrative Hearings Division – UI Appeals Bureau

March 6th, 2024  
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>.

**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
6200 Park Avenue Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://eab.iowa.gov)**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
6200 Park Avenue Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://eab.iowa.gov)**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.