

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CURTIS K COLLINS

Claimant

MJ DEROCHE CONSTRUCTION LLC

Employer

APPEAL 19A-UI-04385-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/20/19

Claimant: Respondent (2R)

Iowa Code § 96.6(2) – Timeliness of Appeal

Iowa Code § 96.6(2) – Timeliness of Protest

Iowa Code § 96.7(2)a(6) – Appeal from the Statement of Charges

STATEMENT OF THE CASE:

The employer filed an appeal from May 14, 2019 initial decision (reference 01) which concluded the claimant was eligible for benefits and the employer failed to file a timely protest. A hearing was scheduled and held on June 24, 2019, pursuant to due notice. Claimant did not register for the hearing and did not participate. Employer participated through Matt Derocher, owner. The administrative law judge took official notice of the administrative records. Department Exhibits 1-3 were admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the employer's appeal timely?

Was the employer's protest timely?

Was the employer's appeal from the statement of charges timely, and is the statement of charges correct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The Notice of Claim was mailed to the employer's address of record on January 24, 2019 (Department Exhibit 2). The employer did not receive that notice. The first notice of the claimant's claim for benefits was the receipt of the Statement of Charges mailed May 9, 2019 for the first quarter of 2019. The employer filed its appeal of that Statement of Charges on May 29, 2019 (Department Exhibit 3). Employer is protesting the claim on the basis that claimant quit the employment on November 30, 2018. The issues of the reason for the separation and requalification have not been adjudicated by the Benefits Bureau of the Iowa Workforce Development.

An initial unemployment insurance decision (Reference 01) resulting in the claimant being allowed benefits and concluding the employer failed to file a timely protest was mailed to the

employer's last known address of record on May 14, 2019. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by May 24, 2019. Even though Mr. Derocher or his wife check the employer's mail every couple of days, it did not receive the initial decision until May 24, 2019, which was the day the appeal was due. The claimant called IWD for guidance and was initially given the incorrect email address from the representative to file the appeal. When he filed the appeal on May 28, 2019, he was then informed to use a different (correct) email for appeals to the Appeals Bureau. He resubmitted his appeal on May 29, 2019, via email and five days after receipt of the initial decision (Department Exhibit 1)

REASONING AND CONCLUSIONS OF LAW:

The first issue to address is whether the employer's appeal was timely filed.

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.

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

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).

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 employer did not have an opportunity to appeal the fact-finder's decision because the decision was not received in a timely fashion. Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The employer received the initial on the due date even though it checks mails routinely. The employer filed the appeal within five days of receipt. Therefore, the appeal shall be accepted as timely.

The next issues to resolve are whether the employer filed a timely protest and appeal to the statement of charges.

Another portion of Iowa Code section 96.6(2) dealing with timeliness of an appeal from a representative's decision states that such an appeal must be filed within ten days after notification of that decision was mailed. 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. Iowa Dep't of Job Serv.*, 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.

Iowa Code section 96.7(2)a(6) provides:

2. Contribution rates based on benefit experience.

a. (6) Within forty days after the close of each calendar quarter, the department shall notify each employer of the amount of benefits charged to the employer's account during that quarter. The notification shall show the name of each individual to whom benefits were paid, the individual's social security number, and the amount of benefits paid to the individual. *An employer which has not been notified as provided in section 96.6, subsection 2*, of the allowance of benefits to an individual, may within thirty days after the date of mailing of the notification appeal to the department for a hearing to determine the eligibility of the individual to receive benefits. The appeal shall be referred to an administrative law judge for hearing and the employer and the individual shall receive notice of the time and place of the hearing.

(emphasis added).

An employer is only allowed to appeal the statement of charges for a hearing to determine the eligibility of the individual to receive benefits if they were not previously notified pursuant to Iowa Code § 96.6(2) of the allowance of benefits.

The employer did not have an opportunity to protest the notice of claim and credibly denied receipt of the notice of claim. The employer's first notice of that the claimant had filed a claim for unemployment insurance benefits was when it received the statement of charges. The administrative law judge concludes that the employer filed its appeal of the statement of charges within the time period prescribed by the Iowa Employment Security Law because it did not receive the notice of claim indicating the claimant had filed a claim for benefits. The employer's appeal of that Statement within thirty days is timely. The issues of the reason for the separation and requalification are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The May 14, 2019 (reference 01) decision is reversed. The employer has filed a timely appeal from that statement of charges, as the notice of claim was not received. The statement of charges for the first quarter of 2019 is affirmed, pending a determination on whether claimant is qualified to receive benefits or has requalified for benefits.

REMAND:

The issues of the reason for the separation and whether the claimant has requalified for benefits and the employer should be relieved of charges for the benefits are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn