

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**RICHARD KING**  
Claimant

**SCHUSTER CO.**  
Employer

**APPEAL 21A-UI-22963-AD-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/10/21**  
**Claimant: Respondent (1)**

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Iowa Code § 96.6(2) – Timeliness of Protest

**STATEMENT OF THE CASE:**

On October 14, 2021, Schuster Co. (employer/appellant) filed an appeal from the October 7, 2021 (reference 02) unemployment insurance decision that allowed benefits based on a finding that employer's protest was untimely.

A telephone hearing was held on December 7, 2021. The parties were properly notified of the hearing. Richard King (claimant/respondent) did not participate. Employer participated by Director of Safety Krystin Sitzmann.

Official notice was taken of the administrative record, including the notice of appeal and statement of protest.

**ISSUE:**

Whether employer filed a timely protest.

**FINDINGS OF FACT:**

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

The Notice of Claim was mailed to employer at the address PO BOX 1110 LE MARS IA 51031 on January 14, 2021. That was employer's correct business address on that date and employer received it around that time. The notice of claim contains a warning that the employer protest response is due ten days from the initial notice date and gave a response deadline of January 25, 2021. The employer submitted a written protest via fax on January 29, 2021. It was received by Iowa Workforce Development on that date. Employer does not know the reason for the delay in submitting the protest.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the October 7, 2021 (reference 02) unemployment insurance decision that allowed benefits based on a finding that employer's protest was untimely is **AFFIRMED**.

Iowa Code § 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 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.

Iowa Admin. Code r. 871-24.35(1)(a) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark on the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

(b)

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

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

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.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge has no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten-day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. *E.g. Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that "the submission of any ...appeal...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."

The protest was due on January 25, 2021 but not submitted until January 29, 2021. Employer has not established a good cause reason for the delay and there is no indication it was deprived of a reasonable opportunity to submit the protest in a timely fashion. The administrative law judge therefore finds the protest was untimely.

**DECISION:**

The October 7, 2021 (reference 02) unemployment insurance decision that allowed benefits based on a finding that employer's protest was untimely is AFFIRMED.



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Andrew B. Duffelmeyer  
Administrative Law Judge  
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December 15, 2021  
Decision Dated and Mailed

abd/abd