

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KAYLEE SHARP

Claimant

APPEAL 21A-UI-16700-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FRANCHISE MANAGEMENT INVESTORS

Employer

OC: 01/03/21

Claimant: Respondent (1)

Iowa Code § 96.6(2) – Timeliness of Protest

Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Employer filed a timely appeal from the June 23, 2021, reference 02, decision that allowed benefits and found the protest untimely. After due notice was issued, a hearing was held by telephone conference call on September 7, 2021. The claimant did not participate. The employer did participate through Human Resources Generalist Sarah Olsen. Exhibit D-1, D-2 and D-3 were received into the record.

ISSUES:

Whether the employer's appeal is timely?

Whether the employer's protest is timely?

FINDINGS OF FACT:

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

A disqualification decision was mailed to employer's last known address of record on June 23, 2021. The employer did receive the decision within ten days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by July 3, 2021. (Exhibit D-1) The appeal was not filed until July 9, 2021, which is after the date noticed on the disqualification decision. (Exhibit D-2)

Human Resources Generalist Sarah Olsen testified the employer has had difficulty receiving mail on time at its address of record. She could not specify if this particular decision was received on time at the employer's PO Box. She explained that the employer's third party unemployment insurance service provider, Equifax, empties the PO Box. Equifax then mails these decisions to a second location at 417 Connell St Unit 7 Woodstock New Brunswick Canada E75G5 or notifies the employer electronically. Ms. Olsen said the employer was researching getting another third party servicer because she believes the delay may be partially due to Equifax.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge finds the employer's appeal is untimely. Since the employer's appeal is untimely, the administrative law judge will not consider whether the employer's protest was timely, as he has no jurisdiction to evaluate that issue.

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 issuing 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 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).

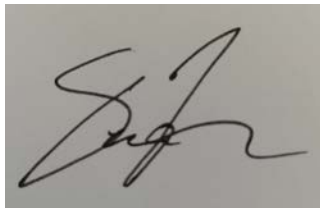
The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. 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 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 appellant did have a reasonable opportunity to file a timely appeal. While Ms. Olsen attributed at least part of the delay on the employer's receipt of the decision at its PO Box, she cannot specify when it was received there. Ms. Olsen also attributed the delay in filing the appeal with its third-party service provider, Equifax. The administrative law judge finds this testimony to be insufficient to overcome the presumption that the decision reached the employer's PO Box at the time of its mailing.

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 § 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 June 23, 2021, reference 02, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.



Sean M. Nelson
Administrative Law Judge
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September 15, 2021
Decision Dated and Mailed

smn/scn