

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

NATHAN P CAMP
Claimant

CLINTON ENGINEERING CO INC
Employer

APPEAL 24A-UI-01942-PT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/12/21
Claimant: Respondent (1)**

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

On February 16, 2024, the employer, Clinton Engineering Co. Inc., filed an appeal from the January 10, 2022, (reference 01) unemployment insurance decision that found the employer's protest untimely and allowed the claimant, Nathan Camp, to receive benefits. After due notice, a telephone hearing was held on March 12, 2024. The claimant participated personally. The employer participated through Payroll Assistant Caroline Dach. The administrative law judge took official notice of the administrative record including the notice of claim and protest.

ISSUES:

Whether the employer's appeal is timely.
Whether the employer's protest is timely.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record finds: The claimant filed an original claim for unemployment insurance benefits effective December 12, 2021. On December 14, 2021, a notification was sent to the employer through the online SIDES system that the notice of claim was available. The notice of claim contains a warning that the employer's protest response is due ten days from the initial notice date and gave a response deadline of December 27, 2021. The administrative record reflects that the employer did not file a protest response regarding the claimant's July 6, 2021 separation from employment until January 7, 2022, which is after the ten-day period had expired.

An unemployment insurance decision was mailed to the employer's address of record on January 10, 2022. The decision determined that the claimant was eligible for benefits because the employer's protest was untimely. At the time the decision was mailed, the employer's previous Payroll Assistant was responsible for reviewing the mail for such matters. She is no longer with the employer, however, there is no evidence in the record indicating that the employer did not receive the decision. The employer did not appeal the decision at that time.

The claimant opened a claim in a second benefit year with an effective date of December 18, 2022. The claimant then filed an additional claim during that same benefit year that was

effective November 19, 2023. The claimant filed weekly continued claims and received unemployment insurance benefits for three weeks between November 26 and December 16, 2023. On February 9, 2024, Iowa Workforce Development mailed the employer a statement of charges for the quarter ending December 31, 2023. The statement of charges reflected a charge of \$426.24 to the employer's account for benefits paid to the claimant during the quarter that ended December 31, 2023. The employer's appeal was submitted on February 16, 2024.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer's appeal is untimely.

Iowa Code section 96.6(2) provides, in pertinent part: "[u]nless 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(1) 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 of 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) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(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.

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 weight of the evidence indicates that the January 10, 2022 (reference 01) unemployment insurance decision was delivered to the employer's address of record in a timely manner, prior to the January 20, 2022, appeal deadline, but the employer did not submit its appeal until after the deadline. The record is absent any evidence that the delay was due to agency error or misinformation or delay of the United States Postal Service pursuant to Iowa Administrative Code rule 871-24.35(2). The employer had a reasonable opportunity to assert an appeal in a timely fashion but waited until after the deadline to file the appeal. As the employer's appeal was not timely filed, pursuant to Iowa Code section 96.6(2), 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); see also, *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The January 10, 2022, (reference 01) unemployment insurance decision that determined the employer's protest was untimely and allowed the claimant benefits is affirmed. The employer's appeal is not timely and the decision of the representative remains in effect.



Patrick B. Thomas
Administrative Law Judge

March 21, 2024
Decision Dated and Mailed

PBT/jkb

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:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: 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:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: 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.