

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**RONALD M JONES**  
Claimant

**JAM EQUITIES OF SE 14<sup>TH</sup> LLC**  
Employer

**APPEAL 20A-UI-00788-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/03/19  
Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

On January 28, 2020, Jam Equities of SE 14<sup>th</sup> LLC (employer) filed an appeal from the January 17, 2020, reference 02, unemployment insurance decision that found the employer's protest untimely and allowed benefits. After due notice was issued, a hearing was held by telephone conference call on February 11, 2020. Ronald M. Jones (claimant) participated personally. The employer participated through Asif Poonja, Manager. The Department's Exhibits D1 and D2 were admitted into the record. The administrative law judge took official notice of the employer's statement of charges for the fourth quarter of 2019 and the protest to the notice of claim.

**ISSUE:**

Is the employer's appeal timely?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: The claimant filed a claim for benefits effective November 3, 2019. The notice of claim was mailed to the employer's address of record on December 11, 2019, and was received by the employer within ten days, on or about December 17. 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 December 23. The employer did not file the response until January 14, 2020, which is after the deadline. The protest response includes a reason for the claimant's separation.

On January 17, an unemployment insurance decision, reference 02, was mailed to the employer's address of record. The employer received it within ten days and the office manager notified Asif Poonja, Manager, of the untimely protest approximately one week before the appeal was filed. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by January 27. The appeal was not filed until January 28, which is after the date noticed on the decision, because the employer was waiting for information from the accountant and store manager about the claimant's separation before filing the appeal.

## 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:

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. Bd. 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).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how the disputed factual issues were resolved. After assessing the credibility of the witnesses who testified during the hearing, the reliability of the evidence submitted, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge does not find the employer's denial they received the unemployment insurance decision to be credible. The employer's witness denied receiving the unemployment insurance decision and said they were prompted to file the appeal due to missing the fact-finding interview. However, as the protest was deemed untimely, no fact-finding interview was scheduled or held. The employer then stated the appeal must have been filed due to receipt of a statement of charges. However, the statement of charges for the fourth quarter of 2019 was not mailed until February 7, 2020 which is more than a week after the appeal was filed. Based on the lack of any other credible notice, it is determined the employer received the unemployment insurance decision that was mailed on January 17.

The record shows that the employer did have a reasonable opportunity to file a timely appeal. The employer's decision to delay filing an appeal while waiting for additional information about the claimant's separation was a business decision. The employer has not established that the failure to file a timely appeal was due to any error by or misinformation from the agency or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). As the appeal was not timely filed, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979).

**DECISION:**

The January 17, 2020, reference 02, unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

A handwritten signature in black ink that reads "Stephanie R Callahan" with a long horizontal flourish extending to the right.

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Stephanie R. Callahan  
Administrative Law Judge

February 14, 2020  
Decision Dated and Mailed

src/scn