

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CAROLINE SHONDEL
Claimant

SQUARE VIEW HOLDINGS LLC
Employer

APPEAL 22A-UI-06074-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/13/22
Claimant: Respondent (2R)**

Iowa Code § 96.6(2) - Timeliness of Protest

STATEMENT OF THE CASE:

Employer/appellant, Square View Holdings, LLC, appealed the March 4, 2022 (reference 02) unemployment insurance decision that granted benefits to claimant, so long as they meet all other eligibility requirements due to finding employer's protest of the 02/08/22, separation as untimely as it was submitted 03/01/22, which is not within ten days of 02/08/22. The parties were properly notified of the hearing. A telephone hearing was held on April 27, 2022. Claimant, Caroline Shondel, did not participate. Employer participated through Carl Cisler, owner. Judicial notice was taken of the administrative record, including the two attachments to the appeal. Department's D-1 was admitted.

ISSUE:

Did the employer file a timely protest?

FINDINGS OF FACT:

Having heard the testimony and reviewed the evidence in the record, the undersigned finds:

The Notice of Claim was mailed to employer on 02/18/2022. Employer's Attachment 1 shows the IWD envelope with a postage meter date of 02/18/2022, but a US postmark date of 02/25/2022 from Des Moines, Iowa. Employer did not timely receive the Notice of Claim, receiving it in the mail on 03/01/2022. Employer filled out the protest, signed, dated the document, and faxed the protest to IWD on 03/01/2022. The Notice of Claim lists a due date of 02/28/2022. (See D-1).

Employer faxed the protest on 03/01/2022. The protest was received on 03/01/2022, with IWD Customer Service stamp date shows received 03/01/2022.

Claimant's separation from employment has not yet been the subject of a Benefits Bureau initial interview and decision.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes employer's protest was timely.

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) 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) 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 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 protest 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 not receive the Notice of Claim within ten days of the mailing date and was deprived of a reasonable opportunity to assert a protest in a timely fashion.

After appellant found out about the notice of claim, by receiving it in the mail on March 1, 2022, they filled out the protest and filed their protest the same day by fax. The protest was timely received on March 1, 2022. Received means when the fax arrives at IWD, not when it is seen on the fax machine, or removed from the fax machine or stamped received from the fax machine. See Iowa Admin. Code r. 871-24.35(1)(c) set forth above. The Iowa Rules of Civil Procedure Rule 1.442(2) addresses this by stating, "Service by electronic means is complete upon transmission, unless the party making service learns that the attempted service did not reach the person to be served." Therefore, the administrative law judge deems that appellant filed a timely protest after receiving notice of the claim.

DECISION:

The March 4, 2022, (reference 02) unemployment insurance decision is **REVERSED**. Employer's protest was timely.

REMAND:

The separation issue is remanded to the Benefits Bureau of Iowa Workforce Development for an initial interview and decision.



Darrin T. Hamilton
Administrative Law Judge

May 6, 2022

Decision Dated and Mailed

dh/ac

Note to Employer:

During the hearing, employer advised that Mr. Cisler's address is the better address to use than the employer's address. Both addresses remain on the cover page of this decision. Employer is directed to contact IWD customer service at 1-866-239-0843 as soon as possible to update their contact information should they want mail sent to only one address, so that their information can be updated within IWD's systems.