

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

JASON C CROOKS

Claimant

and

AFFINITY CREDIT UNION

Employer

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HEARING NUMBER: 17BUI-03528

**EMPLOYMENT APPEAL BOARD
DECISION**

SECTION: 96.6-2

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** and **REMANDS** as set forth below.

FINDINGS OF FACT:

The Employment Appeal Board would adopt and incorporate as its own the administrative law judge's Findings of Fact with the following modifications:

The notice of claim also indicates that, "...Incomplete protest forms will be returned to the employer with the same protest due date..."

The Employer never received any response from the agency to alert it that its protest was incomplete in any way, or that a Fact-finding Interview was set.

The Employer submitted a fax receipt showing its original protest was faxed on February 8, 2017 at 5:23 p.m.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code 96.6 provides:

2. Initial determination. ... 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.

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 - but not conclusive - evidence of the date of mailing.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge and this Board have 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."

871 IAC 24.8(3)"c" provides:

Completing and signing of forms by an employing unit which may affect the benefit rights of an individual.

Failure by an employing unit or its authorized agent to properly complete or sign any form provided by the department relating to the adjudication of a claim *shall* result in the return of the form to the employing unit or its authorized agent for proper completion or signature; however, an extension of any notice or response period to allow for the return of the form shall not be granted. (Emphasis added.)

Here the evidence establishes the Employer originally faxed its uncertified protest on February 8th, 2017 within the 10-day deadline. For some unknown reason, the agency never returned the incomplete appeal as required by the aforementioned rule. Had the agency returned the uncertified protest, the Employer would have had time to re-fax a completed protest. Based on these circumstances, the Board shall find the Employer's protest timely.

DECISION:

The administrative law judge's decision dated April 25, 2017 is **REVERSED & REMANDED** to a claims representative in the Workforce Development Center, Claims Bureau. The claims representative shall issue a decision on the merits of this case that provides the parties appeal rights.

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman

AMG/ss

DATED AND MAILED: _____

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