

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building, 4TH Floor
Des Moines, Iowa 50319
eab.iowa.gov**

IVANTI CONLEY

Claimant

and

ELITE STAFFING

Employer

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HEARING NUMBER: 22B-UI-20365

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.6-2

DECISION

The Employer 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:

On August 13, 2021, a representative's decision was mailed to Elite Staffing c/o Personnel Planners, Inc. (Employer) that determined the Employer filed an untimely Protest to the Notice of Claim. The representative's decision was mailed to the Employer's last known address as provided to Iowa Workforce Development, but was not timely received. The Protest, however, was mailed to an incorrect mailing address.

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); *Bearslee 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 IAC 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."

The law triggers the appeal deadline from the date the decision is mailed to the party's last known address. Iowa Code §96.6 (2011); *accord* 871 IAC 24.19(1); 871 IAC 25.7(2); 871 IAC 26.4 ("An appeal from an initial decision concerning the allowance or denial of benefits shall be filed, by mail, facsimile or in person, not later than ten calendar days, as determined by the postmark or the date stamp, after the decision was mailed to the party at its last-known address."); 871 IAC 24.35(3) ("Any notice, report form, determination, decision, or other document mailed by the division shall be considered as having been given to the addressee to whom it is directed on the date it is mailed to the addressee's last known address."). The question here is whether the decision was mailed to the party's last known address if it was sent to the Employer but not to its designated representative. We find this is not mailing to the last known address. The rules of Workforce allow employers to choose what address to use, and allow anyone to use designated representatives. 871 IAC 22.13; 871 IAC 22.18. The procedures are quite detailed, and we would think be undermined if the party cannot trust that the designations will be treated as the official address of that party. Where an Employer has taken the trouble to supply a specific address of a representative to Workforce we think that that is the "last known address" for these purposes. It would seem a bit much to expect employers to supply the address for those it expects to handle claims but also for every other division of an employer to be on alert for mistakes by the government. See, 871 IAC 22.13. And where a representative is designated it is perfectly reasonable for the Employer to assume that the representative has been notified. A short delay, as occurred here, is to be expected while the Employer figures out what has happened. That delay is the fault of the government.

We find that the Notice of Claim in this matter was not sent to the Employer's last known address. For any deadline to be exceeded it must have, first of all, commenced to run. Here the decision was not mailed to the last known address and the deadline never commenced to run. For employers this does not create a practical problem of an infinite time to appeal. The statute, notwithstanding the failure to mail to the right address, places an outer limit on the time to appeal. Iowa Code §96.7(2)(a)(6)(2011). This case is nowhere near that deadline. The appeal is timely.

DECISION:

The administrative law judge's decision dated December 7, 2021 is **REVERSED & REMANDED** to an administrative law judge in the Workforce Development Center, Appeals Section. The administrative law judge shall issue a decision on the merits of this case. The Administrative Law Judge may in the Administrative Law Judge's discretion conduct an additional hearing if the judge deems it necessary to develop issues that were not adequately addressed in the first hearing because of the disposition of the issue of timeliness. After the hearing, if any, the administrative law judge shall issue a decision that provides the parties appeal rights.

James M. Strohman

Ashley R. Koopmans

Myron R. Linn

AMG/fnv