

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHAEL EYERLY
Claimant

PONCE, OLIVER; SHOTWELL, ERIN
Employer

APPEAL 17A-UI-05626-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/02/17
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer filed an appeal from the May 10, 2017, (reference 01) unemployment insurance decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on June 21, 2017. Claimant participated. Employer participated through CEO/co-founder Erin Shotwell. CCO/co-founder Oliver Ponce attended the hearing on behalf of the employer, but did not testify. The employer offered Employer Exhibit 1 was offered into evidence. Claimant objected to Employer Exhibit 1 because he only received the document within a couple of days of the hearing. Claimant's objection was overruled and Employer Exhibit 1 was admitted. Claimant Exhibit A was admitted into evidence with no objection. Official notice was taken of the administrative record, including the Notice Claim, the employer's protest, and the fact-finding documents, with no objection.

ISSUE:

Is the appeal timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer has been at the address of record for approximately three years. Ms. Shotwell testified she believes it takes between seven to ten days to get mail from Des Moines, Iowa to the employer's address of record. An unemployment insurance decision finding the employer's protest untimely and allowing benefits was mailed to the employer's last known address of record on May 10, 2017. Ms. Shotwell was waiting for the decision and the employer received it on May 22, 2017.

Prior May 22, 2017, Ms. Shotwell had been communicating with Iowa Workforce Development (IWD) about the unemployment insurance benefit process. IWD instructed Ms. Shotwell to wait for the unemployment insurance decision before filing an appeal.

The employer received the decision on May 22, 2017. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by May 20, 2017; however,

May 20, 2017 was a Saturday, so the employer had until May 22, 2017 to file an appeal. On May 22, 2017, Ms. Shotwell started communicating with IWD. Ms. Shotwell testified that on May 26, 2017, the appeals bureau encouraged Ms. Shotwell to go ahead and file an appeal. The appeal was not filed until May 30, 2017, which is after the date noticed on the unemployment insurance decision.

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:

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. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

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 unemployment insurance 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).

The record shows that the appellant received the appeal before the expiration of the appeal period. Ms. Shotwell testified that the employer received the unemployment insurance decision allowing benefits on Monday, May 22, 2017, which was the last day to file an appeal; however, the employer elected to wait over seven days, until Tuesday, May 30, 2017, before filing its appeal.

Although the employer did not receive the decision until May 22, 2017, the employer has failed to show a good cause reason why it delayed over seven days after receiving the decision before filing its appeal. The administrative law judge concludes that the appeal was not timely filed pursuant to Iowa Code § 96.6(2), and 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 May 10, 2017, (reference 01) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs