

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**KENDALL J BROWN**  
Claimant

**APPEAL NO. 17A-UI-00497-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KENDALL J BROWN INC**  
**DATA COLLECTION PHOTOGRAPHERS**  
Employer

**OC: 05/17/15**  
**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed an appeal from the December 6, 2016, reference 02, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on an agency conclusion that the employer's protest was untimely. After due notice was issued, a hearing was held on February 3, 2017. Claimant Kendall Brown participated. Dena Brown represented the employer. Exhibit 1 and Department Exhibits D-1 through D-5 were received into evidence.

**ISSUES:**

Whether the appeal was timely. Whether there is good cause to treat the appeal as timely.

Whether the protest was timely.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: On December 6, 2016, Iowa Workforce Development mailed a copy of the December 6, 2016, reference 02, decision to the employer's last-known address of record. The decision allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on an agency conclusion that the employer's protest was untimely. The decision stated that an appeal from the decision must be postmarked by December 16, 2016 or be received by the Appeals Bureau by that date. The decision contained the instructions for appealing the decision. The decision also provided a customer service number the employer could call if the employer had questions about the decision or the appeal process. The employer received the decision in a timely manner, prior to the deadline for appeal. On January 16, 2017, the employer submitted an online appeal via the Workforce Development Website. Iowa Workforce Development received the appeal at the time it was submitted.

On May 19, 2015, Iowa Workforce Development had mailed a notice of claim to the employer concerning the claim that Kendall Brown had established on May 17, 2015. The notice of claim

indicated that that the employer's response to the notice of claim must be postmarked or faxed by the due date set forth on the notice of claim. That due date was May 29, 2015. The employer received the notice of claim in a timely manner, prior to the protest due date, but did not take any action on the matter until November 28, 2016, after the employer received notice of a change to its unemployment insurance tax rate. The employer contacted the Workforce Development Tax Bureau on November 28, 2016 to protest the change in tax rate and effectively protest the notice of claim.

## **REASONING AND CONCLUSIONS OF LAW:**

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. 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-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency 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).

An appeal submitted by mail is deemed filed on the date it is mailed as shown by the postmark or in the absence of a postmark the postage meter mark of the envelope in which it was 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. See 871 AC 24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is

deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See 871 IAC 24.35(1)(b).

The employer filed its online appeal on January 16, 2017. More than ten calendar days elapsed between the mailing date and the date this appeal was filed. Indeed, the appeal was filed exactly a month after it was due. 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 employer did have a reasonable opportunity to file a timely appeal. The employer's failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Workforce Development error or misinformation or delay or other action of the United States Postal Service. See 871 IAC 24.35(2). Accordingly, there is not good cause to treat the substantially late appeal as a timely appeal. Because the appeal was not timely filed pursuant to Iowa Code section 96.6(2), the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. In other words, the administrative law cannot disturb the December 6, 2016, reference 02, decision which became a final agency decision when the employer failed to file a timely appeal from the decision. See, *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

Even if the employer's appeal had been timely, the employer's protest of the May 19, 2015 notice of claim was not timely. The employer had received the notice of claim in a timely manner, but did not protest until roughly a year and a half after the protest was due. The late filing of the protest was not attributable to Workforce Development or the United States Postal Service.

#### **DECISION:**

The December 6, 2016, reference 02, decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs