

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KEGAN S TALBOT
Claimant

FREEDOM8 INC
Employer

APPEAL 18A-UI-09805-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/12/18
Claimant: Respondent (1)

Iowa Code § 96.6(2) – Timeliness of Appeal; Timeliness of Protest
Iowa Admin. Code r. 871-24.35 – Date of Submission

STATEMENT OF THE CASE:

Freedom8, Inc, Employer, filed an appeal from the September 6, 2018 (reference 01) unemployment insurance decision that found employer's protest untimely and allowed Kegan Talbot, Claimant, benefits. The parties were properly notified of the hearing. A telephone hearing was held on October 24, 2018 at 3:00 p.m. Claimant did not participate. Employer participated through Matt Haberman, Operating Partner. No exhibits were admitted; official notice of the administrative record was taken.

ISSUE:

Whether employer's appeal was filed timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to employer at the correct address on September 6, 2018. Employer received the decision on September 12, 2018. (Haberman Testimony) The decision states that it becomes final unless an appeal is postmarked by September 16, 2018, or received by Iowa Workforce Development Appeal Section by that date. The decision also states that if the due date falls on a Saturday, Sunday or a legal holiday, then the appeal period is extended to the next working day. Thus, the appeal was due Monday, September 17, 2018. Employer mailed its appeal on September 19, 2018. (Haberman Testimony) Employer knows of no reason why the appeal was not mailed prior to the due date. (Haberman Testimony)

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, subsections 10 and 11, 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. (emphasis added)

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 of 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.

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 record in this case shows that more than ten calendar days elapsed between the mailing date and the date the appeal 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 have a reasonable opportunity to file a timely appeal.

Employer received the decision five days prior to the appeal deadline but did not mail its appeal until two days after the deadline. The administrative law judge concludes that failure to file a timely appeal was not due to any agency error or misinformation or delay of the United States Postal Service. The administrative law judge further concludes that the appeal was not timely and, therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. Therefore, no determination is made as to the timeliness of employer's protest.

DECISION:

The employer's appeal was not timely. The administrative law judge has no authority to change the decision of the representative. The September 6, 2018 (reference 01) unemployment insurance decision is affirmed.

Adrienne C. Williamson
Administrative Law Judge
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Decision Dated and Mailed

acw/rvs