

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

TERIONA D EDWARDS
Claimant

APPEAL NO: 19A-UI-00127-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TOWNE HEALTHCARE STAFFING LLC
Employer

OC: 11/25/18
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed an appeal from the December 21, 2018, (reference 04) unemployment insurance decision that found the protest untimely and allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 23, 2019. The claimant did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. The employer participated through Chaya Luria, finance clerk.

NOTE TO EMPLOYER: To become a SIDES E-Response participant, you may send an email to iwd-sidesinfo@iwd.iowa.gov. To learn more about SIDES, visit <http://info.uisides.org>. If you wish to change the address of record, please access your account at: <https://www.myiowaui.org/UITIPTaxWeb/>.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Department Exhibits 1-2 were admitted into evidence. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the appeal timely?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: An initial unemployment insurance decision (Reference 04) that found the protest untimely and allowed benefits was mailed to the employer's address of record on December 21, 2018. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by December 31, 2018.

Ms. Luria received the decision within the appeal period. The employer has designated its Brooklyn, New York address for mail from Iowa Workforce Development. Ms. Luria, who

responded to both the notice of claim and appeal, works at the employer's Howell, New Jersey location. As such, mail is first received by the Brooklyn office before being forwarded to Ms. Luria for handling, which causes a delay in time to respond. There is no designated person or schedule for forwarding the mail to her. Ms. Luria indicated she completed the claim on December 31, 2018. Ms. Luria previously submitted the claim protest electronically but chose to mail the appeal letter. Appeal letters can be mailed, faxed or emailed.

Ms. Luria did not personally mail the appeal letter, but rather placed it in the office mail during the afternoon on December 31, 2018. She did not know what time mail was taken to the post office by the employer. A review of the envelope containing the appeal letter shows that it was meter-marked on December 31, 2018 but not postmarked until January 2, 2019 (Department Exhibit 2), which is after the prescribed period to appeal.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal is untimely.

Iowa Code section 96.6(2) provides, in pertinent part:

Filing – determination – appeal.

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. . . . 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.

Iowa Admin. Code r. 871-24.35(1) provides:

Date of submission and extension of time for payments and notices.

(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.

b. If transmitted by any means other than the United States postal service on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(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.

- a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.
- b. The division shall designate personnel who are to decide whether an extension of time shall be granted.
- c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.
- d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

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. Board 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 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. 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 did have a reasonable opportunity to file a timely appeal. The employer chooses to use its Brooklyn, New York address for IWD related mail, and then manually forwards mail to Chaya Luria in Howell, New Jersey for handling. This business decision can cause a delay in replying to time-sensitive mail. As such, Ms. Luria received notice of the initial decision from the Brooklyn office later than if mail had been directly sent to her office.

Pursuant to rules Iowa Admin. Code r. 871- 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. Iowa Dep't of Job Serv.*, 341 N.W.2d 52 (Iowa 1983). The postage meter mark on the last day for filing does not perfect a timely appeal if the postmark affixed by the United States Postal Service is beyond the filing date. *Pepsi-Cola Bottling Company of Cedar Rapids v. Emp't Appeal Bd.*, 465 N.W.2d 674 (Iowa Ct. App. 1990).

The employer had three options to submit its appeal: by US mail, by fax, or by email. Ms. Luria previously submitted the employer claim protest electronically via email. Ms. Luria chose to mail the employer appeal letter on the afternoon of December 31, 2018, and did not verify when mail would be transported for postmark purposes by the postal service. She did not personally deliver the mail and confirm it was postmarked on December 31, 2018. No evidence was presented that the envelope containing the appeal letter was transported to the local post office and postmarked before the postal service closed that day. As such, the mail was meter-marked on December 31, 2018 but not actually postmarked by the US postal service until January 2, 2019, (Department Exhibit D-2) after the deadline. Ms. Luria presented no evidence that the employer's failure to submit the appeal within the prescribed period was due *to any Agency error or misinformation or delay or other action of the United States Postal Service* pursuant to Iowa Admin. Code r. 871-24.35(2). The administrative law judge further 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 December 21, 2018, (reference 04) unemployment insurance decision is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn