

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

MICHELLE L BRILEY

Claimant

and

CASEY'S MARKETING COMPANY

Employer

: **APPEAL NUMBER:** 23B-UI-19813
: **ALJ HEARING NUMBER:** 22A-UI-19813
:
: **EMPLOYMENT APPEAL BOARD**
: **DECISION**
:
: **NUNC PRO TUNC**
:

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 20, 2022, a Notice of Claim was mailed to Casey's Marketing Company (Employer). The notice was mailed to the Employer's last address of record. The Employer received the Notice of Claims via **SIDES**, and submitted their protest on September 1, 2022 (due date). Unbeknownst to the Employer, the system did not fully transmit the protest and bounced it back the next day. The Employer promptly re-submitted the protest on September 2, 2022.

REASONING AND CONCLUSIONS OF LAW:

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 the 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); *Beardslee 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 not whether the decision was mailed to the party’s last known address, because it was, but whether the Employer’s subsequent re-submission on September 2, 2022, was timely. We think it was. The Employer provided credible evidence that they submitted their protest on September 1, 2022. It was due to technical error in the transmission of that protest that it wasn’t received by Workforce. Once the Employer received notification of that error on September 2, 2022, the Employer promptly re-submitted their protest. Based on this circumstance, we find the employer’s protest timely.

DECISION:

The administrative law judge’s decision dated January 23, 2023 is **REVERSED & REMANDED** to the Workforce Development Center, Benefits Bureau to hold a Fact-finding Interview on the merits of the separation. The Benefits Bureau shall issue an unemployment insurance decision on the merits of this case that provides the parties appeal rights.

James M. Strohman

Ashley R. Koopmans