

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JAMES P MCBROOM**  
Claimant

**MOTORSPORTS WAREHOUSE  
DISTRIBUTOR**  
Employer

**APPEAL 19A-UI-09657-AW-T  
ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/29/18  
Claimant: Respondent (1)**

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Iowa Code § 96.6(2) – Filing – Timely appeal

**STATEMENT OF THE CASE:**

Employer filed an appeal from the January 28, 2019 (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on January 7, 2020, at 11:00 a.m. Claimant did not participate. Employer participated through Brent Antill, Manager. Employer's Exhibit 1 was admitted. Official notice was taken of the administrative record.

**ISSUE:**

Whether employer filed a timely appeal.

**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 108 Southeast 2nd Street, Ames, Iowa on January 28, 2019. That was not employer's correct address on that date. In August 2015, employer moved its business from 108 Southeast 2nd Street, Ames, Iowa to 1498 220th Street, Boone, Iowa. Employer did not receive the January 28, 2019 decision. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development Appeals Section by February 7, 2019. On May 9, 2019, a Statement of Charges for the first quarter of 2019 was mailed to employer at 1498 220th Street, Boone, Iowa. The Statement of Charges included a charge for claimant. Employer does not recall receiving the Statement of Charges. In November 2019, employer received a letter from Iowa Workforce Development regarding a tax rate increase for rate year 2020. Employer appealed the decision via mail on December 3, 2019, as evidenced by the postmark.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes employer did not file a timely appeal.

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless 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)(a) 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 on 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 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.

While the unemployment insurance decision issued on January 28, 2019 was not mailed to employer's correct address, the statement of charges dated May 9, 2019 was mailed to employer's correct address. The statement reflected charges for claimant and, thus, put employer on notice of the claim and adverse decision. Employer had a reasonable opportunity to file a timely appeal when it received the statement of charges, but waited until it received the notice of tax rate increase to file its appeal. The administrative law judge 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.

**DECISION:**

Employer's appeal was not timely. The administrative law judge has no authority to change the decision of the representative. The January 28, 2019 (reference 01) unemployment insurance decision is affirmed.

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Adrienne C. Williamson  
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Decision Dated and Mailed

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