

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BLAKE R CHAMBERS
Claimant

7G DISTRIBUTING LLC
Employer

APPEAL 22A-UI-07112-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/01/21
Claimant: Respondent (2R)**

Iowa Code § 96.6(2) - Timeliness of Protest

STATEMENT OF THE CASE:

Employer/appellant, 7G Distributing, LLC., appealed the March 9, 2022, (reference 01) unemployment insurance decision that granted benefits to claimant, so long as they meet all other eligibility requirements due to finding employer's protest of the 03/18/21, separation as untimely as it was submitted 08/17/21, which is not within ten days of 08/04/21. The parties were properly notified of the hearing. A telephone hearing was held on May 2, 2022. Claimant, Blake Chambers, did not participate. Employer participated through Molly Jacobson, vice-president of human resources. Employer's R-1, as well as Department's D-1 were admitted as exhibits. Judicial notice was taken of the administrative record.

ISSUE:

Did the employer file a timely protest?

FINDINGS OF FACT:

Having heard the testimony and reviewed the evidence in the record, the undersigned finds:

The Notice of Claim was mailed to employer on 08/04/2021. Employer timely received the Notice of Claim, receiving it on or before 08/16/2021. Employer filled out the protest, signed, and dated the document 08/16/2021. The Notice of Claim lists a due date of 08/16/2021. (See D-1).

Employer faxed the protest on 08/16/2021 at 11:05:58 AM. Employer testified about documentation that showed the fax was sent and was received okay. Employer asserts it was e-mailed to the appeals help desk, however, the document was not received nor placed into the file. The protest was received on 08/16/2021, even though the IWD Customer Service stamp date shows received 08/18/2021.

Claimant's separation from employment has not yet been the subject of a Benefits Bureau initial interview and decision.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes employer's protest was timely.

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.

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 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.

(b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

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.

Another portion of this same Code section dealing with timeliness of an appeal from a representative's decision states that such an appeal must be filed within ten days after notification of that decision was mailed. In addressing an issue of timeliness of an appeal under that portion of this Code section, the Iowa Supreme Court held that this statute prescribing the time for notice of appeal clearly limits the time to do so, and that compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979). The administrative law judge considers the reasoning and holding of the Iowa Supreme Court in that decision to be controlling on this portion of that same Iowa Code section which deals with a time limit in which to file a protest after notification of the filing of the claim has been mailed.

Employer received the Notice of Claim on or prior to the due date. The protest was faxed 08/16/21, came into IWD and was timely received on 08/16/21. Received means when the fax


arrives at IWD, not when it is seen on the fax machine, or removed from the fax machine or stamped received from the fax machine. See Iowa Admin. Code r. 871-24.35(1)(c) set forth above. The Iowa Rules of Civil Procedure Rule 1.442(2) addresses this by stating, "Service by electronic means is complete upon transmission, unless the party making service learns that the attempted service did not reach the person to be served." Therefore, the administrative law judge deems that appellant filed a timely protest after receiving notice of the claim.

DECISION:

The March 9, 2022, (reference 01) unemployment insurance decision is **REVERSED**. Employer's protest was timely.

REMAND:

The separation issue is remanded to the Benefits Bureau of Iowa Workforce Development for an initial interview and decision.



Darrin T. Hamilton
Administrative Law Judge

May 13, 2022

Decision Dated and Mailed

dh/ac