

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BONNIE L KIMBALL
Claimant

V T INDUSTRIES INC
Employer

APPEAL 21A-UI-25393-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/26/21
Claimant: Respondent (2R)**

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

STATEMENT OF THE CASE:

On November 16, 2021, the employer/appellant filed an appeal from the October 29, 2021, (reference 01) unemployment insurance decision that allowed benefits based on employer's protest being untimely. The parties were properly notified about the hearing. A telephone hearing was held on January 13, 2022. Claimant participated in the hearing. Employer participated through Amanda Doonon. Administrative notice was taken of claimant's unemployment insurance benefits records. In particular, administrative notice was taken of the Notice of Claim dated October 5, 2021.

ISSUES:

Is claimant's appeal timely?

Was the employer's protest 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 the appellant's address of record on October 29, 2021. The decision included a notice that an appeal needed to be filed by November 8, 2021. The appellant did not receive the decision until November 15, 2021. The appeal was sent immediately.

Claimant's notice of claim was mailed to employer's address of record on October 5, 2021, and was received by employer within ten days. The notice of claim contains a warning that the employer's response is due ten days from the initial notice of claim date and gave a response deadline of October 15, 2021. (Notice of Claim). The employer filed its protest on October 15, 2021.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is.

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.

The appellant did not have an opportunity to appeal the unemployment insurance decision because the decision was not received in a timely fashion. Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The appellant filed the appeal within 1 day of receipt. Therefore, the appeal shall be accepted as timely.

The next issue is whether employer's protest is timely. The administrative law judge concludes it is.

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

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 law provides that all interested parties shall be promptly notified about an individual filing a claim. The parties have ten days from the date of mailing the notice of claim to protest payment

of benefits to the claimant. Iowa Code § 96.6(2). Another portion of section 96.6(2) dealing with timeliness of an appeal from a representative's decision states 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 has held that this statute clearly limits the time to do so, and compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979). The employer received the notice of claim within the protest period and filed the protest on October 15, 2021, which is prior to the deadline. Therefore, the protest shall be accepted as timely.

DECISION:

The Employer's appeal is timely.

The October 29, 2021, (reference 01) unemployment insurance decision is REVERSED. The employer filed a timely protest on October 15, 2021.

REMAND: The separation issue is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision.



Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

February 14, 2022
Decision Dated and Mailed

cs/scn