

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AHMAD R NUNN
Claimant

GREYSTONE MANUFACTURING LLC
Employer

APPEAL 19A-UI-06658-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/21/19
Claimant: Respondent (2R)

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

The employer/appellant, Greystone Manufacturing Inc., filed an appeal from the August 16, 2019 (reference 08) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits and concluded the employer failed to file a timely protest. The parties were properly notified about the hearing. A telephone hearing was held on September 12, 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 Sherry Ault, human resources manager.

The administrative law judge took official notice of the administrative records. Department Exhibit 1 was admitted. 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.

ISSUES:

Did the employer file a timely protest?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed for this employer and separated from employment on July 18, 2018. Thereafter, he established a claim for unemployment insurance benefits with an effective date of July 22, 2018. The employer timely protested the claim for benefits. In an August 9, 2018 (reference 01), initial decision, the claimant was disqualified from benefits based upon his separation with this employer.

On July 21, 2019, the claimant established a claim for a second benefit year. On July 22, 2019, a second notice of claim was sent electronically to the employer through the State Information Data Exchange System (SIDES) with a response due date of August 2, 2019. The employer verified the correct email address on file was used but reported it did not receive the notice of claim and therefore did not respond within the ten-day period. The first knowledge the employer had of the notice of claim for the claimant under his second benefit year was on August 9, 2019

when Ms. Ault received a notification email and logged on to respond to the claim for a different claimant and saw the late claim for Mr. Nunn for the first time. She completed her response and submitted it on August 9, 2019 (Department Exhibit 1).

REASONING AND CONCLUSIONS OF LAW:

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

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.

Iowa Admin. Code r. 871-24.8(2) provides:

Notifying employing units of claims filed, requests for wage and separation information, and decisions made.

24.8(2) Responding by employing units to a notice of the filing of an initial claim or a request for wage and separation information and protesting the payment of benefits.

a. The employing unit which receives a Form 65-5317, Notice of Claim, or Form 68-0221, Request for Wage and Separation Information, must, within ten days of the date of the notice or request, submit to the department wage or separation information that affects the individual's rights to benefits, including any facts which disclose that the individual separated from employment voluntarily and without good cause attributable to the employer or was discharged for misconduct in connection with employment.

b. The employing unit may protest the payment of benefits if the protest is postmarked within ten days of the date of the notice of the filing of an initial claim. In the event that the tenth day falls on a Saturday, Sunday or holiday, the protest period is extended to the next working day of the department. If the employing unit has filed a timely report of facts that might adversely affect the individual's benefit rights, the report shall be considered as a protest to the payment of benefits.

c. If the employing unit protests that the individual was not an employee and it is subsequently determined that the individual's name was changed, the employing unit shall be deemed to have not been properly notified and the employing unit shall again be provided the opportunity to respond to the notice of the filing of the initial claim.

d. The employing unit has the option of notifying the department under conditions which, in the opinion of the employing unit, may disqualify an individual from receiving benefits. The notification may be submitted electronically.

(1) The Notice of Separation, Form 60-0154, must be postmarked or received before or within ten days of the date that the Notice of Claim, Form 65-5317, was mailed to the employer. In the event that the tenth day falls on Saturday, Sunday or holiday, the protest period is extended to the next working day of the department. If a claim for

unemployment insurance benefits has not been filed, the Notice of Separation may be accepted at any time.

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

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

24.35(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 division 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 employer did not have an opportunity to protest the notice of claim because the notice 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 employer timely denied receipt of the notice of claim. The employer filed the protest within one day upon learning about the notice of claim. Therefore, the protest shall be accepted as timely.

REMAND: The issue of whether the claimant's separation was previously adjudicated (by way of an August 9, 2018 decision, for a claim with an effective date of July 22, 2018) is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The August 16, 2019 (reference 08) initial decision is reversed. The employer filed a timely protest. **REMAND:** The issue of whether the claimant's separation was previously adjudicated (by way of an August 9, 2018 decision, for a claim with an effective date of July 22, 2018) is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/rvs