

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**WILLIAM J SIDZYIK**  
Claimant

**ACCURATE LAWN & IRRIGATION LLC**  
Employer

**APPEAL 17A-UI-11505-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/15/17**  
**Claimant: Respondent (2R)**

Iowa Code § 96.6(2) - Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer/appellant filed an appeal from the November 3, 2017 (reference 02) unemployment insurance decision which found that the employer's protest cannot be accepted because it was not timely. The parties were properly notified of the hearing. A telephone hearing was held on December 5, 2017. The claimant, William J. Sidzyik, did not participate. The employer, Accurate Lawn & Irrigation LLC, participated through witnesses Jason Downing and Pam Woodruff. Department's Exhibit D1 was admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

**ISSUE:**

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 employer received the notice of claim for this claimant from Iowa Workforce Development as it was mailed to the employer's last known address on October 20, 2017. See Exhibit D1. Mr. Downing completed the employer's statement of protest on October 24, 2017. See Exhibit D1. Ms. Woodruff deposited the statement of protest in the U.S. postal mail on October 25, 2017 with the proper postage affixed. There was no postage meter mark affixed to the envelope. The letter was never postmarked by the U.S. postal service and was returned to employer on October 31, 2017. On October 31, 2017, employer contacted Iowa Workforce Development and was instructed to fax the employer's statement of protest, which it did the same date.

There has been no initial investigation and determination regarding claimant's separation from this employer. The question of whether the claimant is separated from employment will be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes employer's protest is 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. 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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 96.8, subsection 5.

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 Iowa Code § 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 reasoning and holding of the *Beardslee* court is considered controlling on the portion of Iowa Code § 96.6(2) that deals with the time limit to file a protest after the notice of claim has been mailed to the employer.

Iowa Admin. Code r. 871-24.35(1) provides:

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

(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 of 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 by any means other than the United States postal service on the date it is received by the division.

The statement of protest was transmitted via the United States postal service, however, no postmark or postage meter mark was affixed to the envelope. In the absence of either mark, the date entered on the document as the date of completion shall control. That date is October 24, 2017, which is prior to the October 30, 2017 due date. Therefore, the protest shall be accepted as timely.

**DECISION:**

The November 3, 2017 (reference 02) unemployment insurance decision is reversed. The employer has filed a timely protest.

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

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/rvs