

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TIFFANI M FINCH
Claimant

APPEAL 23A-UI-09898-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHOICES A CHRISTIAN LIVING STORE
Employer

**OC: 09/03/23
Claimant: Respondent (2-R)**

Iowa Code § 96.6(2) - Timeliness of Protest

STATEMENT OF THE CASE:

The employer, Choices a Christian Living Store, filed a timely appeal from the October 9, 2023, reference 04, decision that granted benefits and found the protest untimely. After due notice was issued, a hearing was held on November 3, 2023 at 9:00 a.m. The claimant did not participate. The employer participated through President Julie Jones. Exhibit D-1 was received into the record. Official notice was taken of the agency records.

ISSUE:

The issue is whether employer's protest is untimely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The notice of claim was mailed to the physical address of the store the claimant worked at, 101 West 2nd Street North in Newton, Iowa 50208 3251 on September 7, 2023. The employer has designated the employer's primary and tax address as 1610 South 12th Avenue East in Newton Iowa 50208 5074 in the website MyIowaUI.org ("MyIowaUI"). She also designated the mailing address for this reporting unit to be 1610 South 12th Avenue East in Newton Iowa 50208 5074. The employer has also signed up for electronic delivery of notices of claim via the State Information Data Exchange System ("SIDES"). President Julie Jones did not receive a notification by email at the email address given for SIDES enrollment.

Ms. Jones does not regularly check mail sent to 101 West 2nd Street North in Newton, Iowa 50208 3251 because she does not expect it to be sent there. Ms. Jones was on vacation from September 6, 2023, through September 17, 2023. Ms. Jones' father had surgery the following day. Ms. Jones was ill for the following two weeks.

After recovering from the illness on October 3, 2023, the claimant ventured to 101 West 2nd Street North in Newton, Iowa 50208 3251, to check for irregular mail. She found it in the mailbox. The notice of claim read in pertinent part, "Protest forms submitted to Iowa Workforce Development must be postmarked or faxed by the due date shown above." The due date written on the notice of claim was September 18, 2023. (Exhibit D-1)

Ms. Jones sent the employer's notice of claim response by mail on October 4, 2023. On the protest, Ms. Jones reported the claimant is still employed by the employer in a part-time capacity. The employer reported the claimant is receiving the same hours and wages as in her original contract for hire.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the employer was excused from meeting the deadline on the notice of claim due to circumstances beyond its control. Its protest is otherwise timely.

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 issuing the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. 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 issued, 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.

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. [Emphasis added]

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 that 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.

The employer filed the protest after the deadline. With that in mind, the employer has the burden of showing that circumstances beyond its control warrant extension of the deadline. Generally, extending the protest period is reasonable when circumstances beyond the control of party would deny them due process such as non-receipt or a delay in receipt of mail due circumstance beyond the party's control. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

The administrative law judge finds the employer has met the standard. It is acknowledged that theoretically Ms. Jones could have checked the individual store's mail to ensure that there was

not a delay. The following observation would be that generally vacation, an ill parent, and a transitory personal illness are not circumstances that will delay the protest period.

The administrative law judge does not find these circumstances problematic because the delivery of that mail was so far removed from the instructions given by the employer. The employer provided the correct address in three different fields. The administrative law judge could not find the address that it was sent to in the MyIowaUI website as anything listed but a physical address for one of its reporting units. This reporting unit also had the correct address for listed for its mailing address. The record reflects Ms. Jones checks the mail more regularly for the address of record of her business, as any reasonably prudent person would. To fault her for not checking a mailing address that is not even in the area that an employer would give this information would be harmful to harm process.

Furthermore, the employer signed up for electronic delivery of claims through the SIDES system. This reflects a further error on the part of Iowa Workforce Development Department. Ms. Jones should have received a notice of claim sent to her by email. Likely none of the unavailing circumstances such as her being on vacation would have mattered if the notice had been sent by email as instructed.

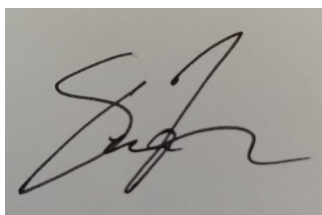
In summary, the administrative law judge observes Ms. Jones may still have avoided the delay. Nevertheless, he observes that but for Iowa Workforce Development's double error regarding the delivery of notices of claim, no effort on the part of Ms. Jones would be necessary.

DECISION:

The October 9, 2023, reference 04, decision is REVERSED. The employer was excused from meeting the deadline on the notice of claim due to circumstances beyond its control. Its protest is otherwise timely.

REMAND:

The administrative law judge is remanding to the Benefits Bureau the issue regarding whether the employer is relieved from charges because the claimant was receiving the same hours and wages from this employer as outlined in the findings of fact if such determination is deemed necessary to process this claim.



Sean M. Nelson
Administrative Law Judge II
Iowa Department of Inspections & Appeals
Administrative Hearings Division – UI Appeals Bureau

November 6, 2023
Decision Dated and Mailed

smn/scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.