

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**DANIEL ZUNIGA**  
Claimant

**ADVANCE SERVICES INC**  
Employer

**APPEAL 20A-UI-06193-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/09/20**  
**Claimant: Respondent (2-R)**

Iowa Code § 96.6(2) – Timeliness of Protest

**STATEMENT OF THE CASE:**

On June 18, 2020, Advance Services, Inc. (employer) filed an appeal from the June 16, 2020, reference 01, unemployment insurance decision that found the protest untimely and allowed Daniel Zuniga (claimant) to receive benefits. After due notice was issued, a hearing was held by telephone conference call on July 13, 2020. The claimant did not respond to the hearing notice and did not participate. The employer participated through Melissa Lewien, Risk Management. The Employer's Exhibit 1 was admitted into the record. The administrative law judge took official notice of the claimant's claim and wage histories.

**ISSUE:**

Is the employer's protest timely?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: The claimant separated from employment on August 11, 2019 and filed a claim for benefits effective February 9, 2020. The claimant's weekly benefit amount is \$343. The administrative record shows the claimant has not earned more than \$3,430 in insured wages since the separation. Iowa Workforce Development (IWD) has not addressed whether the claimant's separation from this employer qualifies him for regular unemployment benefits.

The notice of claim was mailed to employer's address of record on February 13, and was received by employer within ten days. The notice of claim contains a warning that the employer protest response is due ten days from the initial notice date and gave a response deadline of February 24. The employer submitted the protest on February 19 via fax, which was received by IWD the same day.

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that employer filed a timely protest to the claimant's receipt of benefits.

Iowa Code § 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. 871-24.35(2) provides:

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

(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 department 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 has established that it filed a timely protest. The employer submitted the protest to IWD within ten days of the mailing date on the notice of claim. It has established that any delay in receipt of the protest was due to agency error.

The issue of whether the claimant's separation from this employer qualifies him for benefits is remanded to the Benefits Bureau of IWD for a fact-finding interview, to include both parties, and decision, mailed to both parties with appeal rights.

## **DECISION:**

The June 16, 2020, reference 01, unemployment insurance decision is reversed. The employer filed a timely protest.

**REMAND:**

The issue of whether the claimant's separation from this employer qualifies him for benefits is remanded to the Benefits Bureau of IWD for a fact-finding interview, to include both parties, and decision, mailed to both parties with appeal rights.

A handwritten signature in blue ink that reads "Stephanie R Call". The signature is fluid and cursive, with a long horizontal stroke at the end.

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Stephanie R. Callahan  
Administrative Law Judge

July 21, 2020  
Decision Dated and Mailed

src/sam