

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**CONNOR T WARD**

Claimant

**APPEAL 19A-UI-01133-AW-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OAK WOOD HOMES LC**

Employer

**OC: 01/20/19**

**Claimant: Respondent (1)**

Iowa Code § 96.6(2) – Filing – Timely protest  
Iowa Admin. Code r. 871-24.35 – Filing – Receipt

**STATEMENT OF THE CASE:**

Oak Wood Homes LC, Employer, filed an appeal from the February 7, 2019 (reference 02) unemployment insurance decision that found the protest untimely. The parties were properly notified of the hearing. A telephone hearing was held on February 22, 2019 at 11:00 a.m. Claimant did not participate. Employer participated through Brett Bunkers, Owner. Employer's Exhibit 1 was admitted. Department's Exhibit D1 was admitted. Official notice was taken of the administrative record.

**ISSUE:**

Whether employer filed a timely protest.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The Notice of Claim was mailed to Oak Wood Homes LC, Dan Schaefer, 1500 Illinois Street, Des Moines, Iowa on January 25, 2019. (Exhibit D1) That was the employer's correct business address on January 25, 2019. (Bunkers Testimony)

Employer is not certain what date it received the Notice of Claim. (Bunkers Testimony) Employer does not date stamp mail upon receipt. (Bunkers Testimony) However, employer assumes the Notice of Claim was received the following Monday, January 28, 2019 or Tuesday, January 29, 2019. (Bunkers Testimony) Employer's office manager receives mail and sorts it by type. (Bunkers Testimony) The office manager only opens the mail that she needs to perform her job duties. (Bunkers Testimony) The Notice of Claim was addressed to the attention of Dan Schaefer and is not the type of mail that the office manager needs to perform her job, so she placed the Notice of Claim aside for Schaefer. (Bunkers Testimony) Schaefer left for vacation on Friday, January 25, 2019 and returned to the office on February 4, 2019. (Bunkers Testimony) Upon return to the office, Schaefer opened the Notice of Claim and forwarded it to Bunkers. (Bunkers Testimony) Bunkers received the Notice of Claim on February 5, 2019 and immediately completed, signed and submitted Employer's Statement of Protest. (Bunkers Testimony)

The Notice of Claim lists a due date of February 4, 2019. (Exhibit D1) The protest was submitted via facsimile and received by Iowa Workforce Development on February 5, 2019. (Exhibit D1)

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

For the reasons that follow, the administrative law judge concludes the employer's protest was untimely.

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.

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

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:

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

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

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.

Another portion of this same Iowa Code section dealing with timeliness of an appeal from a representative's decision states that such 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 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 the Iowa Supreme 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 received the notice of claim on or before the due date, but did not submit it to Iowa Workforce Development until after the due date. Employer's delay in submitting its protest was a result of its office procedures. The reason for delay is not attributable to the agency or the United States postal service. Employer's protest is untimely; therefore, the administrative law judge is without jurisdiction to entertain any appeal regarding the separation from employment.

**DECISION:**

The February 7, 2019 (reference 02) unemployment insurance decision is affirmed. Employer's protest was untimely.

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Adrienne C. Williamson  
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Decision Dated and Mailed

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