

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DONALD CARPENTER
Claimant

HDS LTD
Employer

APPEAL 22A-UI-00144-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/04/21
Claimant: Respondent (2-R)

Iowa Code § 96.6(2) - Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 10, 2021, (reference 02) unemployment insurance decision that found the protest untimely and allowed benefits. After due notice was issued, a hearing was held at 8:00 a.m. on Friday, January 21, 2022. The claimant, Donald Carpenter, did not appear or participate in the hearing. The employer, HDS, Ltd., participated by Michael Chamberlain. The administrative law judge took official notice of the administrative record, including the notice of claim and the statement of protest.

ISSUES:

Was the employer's protest timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant's notice of claim was mailed to employer's address of record on April 13, 2021, 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 April 23, 2021. The employer filed its protest on April 23, 2021.

The employer receives the notices of claim through the U.S. mail. Chamberlain personally received the claimant's notice of claim and completed the statement of protest, indicating the claimant had quit employment to work for another employer. On April 23, he then took the document to the UPS Store to fax it to Iowa Workforce Development ("IWD"). Unfortunately, the IWD fax machine was not responding and would not receive the fax, despite multiple attempts. Chamberlain then left the UPS Store and went to the U.S. Post Office, where he mailed the statement of protest to IWD.

REASONING AND CONCLUSIONS OF LAW:

The sole issue is whether employer's protest is timely. The administrative law judge concludes it is.

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. 871-24.35(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:

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 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 section 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 section 96.6(2) that deals with the time limit to file a protest after the notice of claim has been mailed to the employer.

The employer received the notice of claim within the protest period. It attempted to submit the statement of protest via fax, but the IWD fax number was inoperable. Then, after being thwarted by technology, the employer took its statement of protest to the U.S. Post Office and placed it in the mail. Therefore, the administrative law judge finds that the employer filed its statement of protest on the date it mailed the statement of protest: April 23, 2021. The statement of protest is timely filed.

NOTE TO EMPLOYER: To become a SIDES E-Response participant and receive Notices of Claim electronically, you may send an email to iwd-sidesinfo@iwd.iowa.gov. To learn more about SIDES, visit <http://info.uisides.org>.

DECISION:

The November 10, 2021, (reference 02) unemployment insurance decision is reversed. The employer filed a timely protest.

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



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau

February 7, 2022
Decision Dated and Mailed

lj/lj