

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AUTHUR G BROWN
Claimant

CMND LLC
Employer

APPEAL 19A-UI-00279-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/09/18
Claimant: Respondent (1)

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Employer filed an appeal from the January 7, 2019, (reference 03) unemployment insurance decision that found the protest untimely and allowed benefits. After due notice was issued, a hearing was held by telephone conference call on January 29, 2019. The claimant, Authur Brown, did not register a telephone number at which to be reached and did not participate in the hearing. The employer, CMND, L.L.C., participated by David Huffman, and Owner; Dustin Prince, Supervisor. The administrative law judge took official notice of the administrative record, including the Notice of Claim and protest.

ISSUE:

Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Claimant's notice of claim was mailed to employer's address of record on December 18, 2018. 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 December 28, 2018. The employer did not file a protest response until January 2, 2019, which is after the ten-day period had expired. Huffman explained that he was out of town from December 20 through December 28 or 29, so he did not receive the notice of claim immediately when it arrived. He checked the mail on December 31 and discovered the notice of claim, and he filled it out that day. Huffman then waited until January 2 to fax the protest back to Iowa Workforce Development. The business was still in operation during Huffman's absence from the office but does not have anyone review mail for potentially urgent matters while he is away.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that employer has failed to protest response within the time period prescribed by the Iowa Employment Security Law.

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(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's choice to designate Huffman as the sole person who has access to retrieving the mail was a business decision. The employer has not shown any good cause for failure to comply with the jurisdictional time limit or that the delay was due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). Therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the claimant's separation from employment or authority to remand for a fact-finding interview. Iowa Code § 96.6(2).

DECISION:

The January 7, 2019, (reference 03) unemployment insurance decision is affirmed. Employer has failed to file a timely protest response, and the unemployment insurance decision shall stand and remain in full force and effect.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn