

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

ALAN E LEWIS

Claimant

APPEAL NO. 18A-UI-06419-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIDWEST STORAGE SOLUTIONS INC

Employer

OC: 05/20/18

Claimant: Respondent (4R)

Section 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Midwest Storage Solutions, Inc, the employer, filed an appeal from the June 7, 2018, reference 01 decision that allowed benefits and found the employer's protest untimely. After due notice was issued, a telephone conference hearing was scheduled for and held on June 27, 2018. The employer participated through Ms. Penny Vaughn, Accountant. Claimant participated. The administrative law judge took official notice of the Iowa Employment Security law, the Iowa Administrative Code and the Administrative record. Department Exhibit D-1 was admitted into evidence.

ISSUE:

Whether employer's protest of the claim for benefits was timely.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Claimant's Notice of Claim was mailed to the employer's address of record on May 22, 2018. The notice of claim contains a warning that any protest must be postmarked or faxed by the due date shown by the due date set forth on the Notice which was June 1, 2018. The notice of claim was received at the employer's place of business, prior to the deadline for protest. On Thursday, May 31, 2018, Ms. Penny Vaughn, Company Accountant, deposited employer's protest in a US Post Office mail receptacle. Ms. Vaughn noted that the scheduled mail pick-up time on the receptacle box was for 4:30 p.m. that afternoon. Because Ms. Vaughn had deposited the protest prior to noon that day, she believed that the envelope encasing the protest would be postmarked that day, May 31, 2018 and considered timely. Ms. Vaughn believed that the document was with affixed proper postage and properly addressed would be postmarked and subsequently received by Iowa Workforce Development, and that it would be considered timely.

Ms. Vaughn had noted the due date for the protest form, however, the submission of the protest had been delayed for approximately one or two days because the company owner was not present and Ms. Vaughn wanted more complete information before protesting the claim of Alan E. Lewis.

The protest form was date stamped as received by Iowa Workforce Development "Jun 04, 2018" by the Agency's benefit section. (See Exhibit D-1). The envelope encasing the protest or a copy of it is not available for review.

The form submitted by Ms. Vaughn on behalf of Midwest Storage Solutions, Inc. contained only information regarding severance pay, dismissal pay, separation allowance, wages in lieu of notice, and stated no reasons that the claimant might be subject to disqualification from unemployment insurance benefits.

Information supplied on the form itself instructs the employer that to protest the payment of benefits the section of the form for protesting must be fully completed, certified, and be postmarked or faxed by the due date that is shown on the form. The employer's further informed that the company need not reply if the claimant was laid off due to lack of work, unless the claimant received or will receive vacation pay, severance pay, dismissal pay, etc.

REASONING AND CONCLUSIONS OF LAW:

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 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. 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 mailed to the claimant's last known address, 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.

In the case at hand, the employer's witness strongly asserts that the protest was timely because she personally deposited the envelope containing the protest in the US Post Office mail receptacle at least four and one half hours before the scheduled pick-up time on Thursday, May 31, 2018. The administrative law judge has taken official notice of Mr. Lewis' administrative file, however, a search of the electronic files does not reveal a depiction of the envelope that encased the employer's protest is not available to determine if it was postmarked on May 31, 2018, as the employer strongly asserts. The administrative law judge concludes that the greater weight of evidence in the record establishes the employer's intent to protest some portion of Mr. Lewis' claim and is considered timely. In view of the fact, however, that the protest stated no disqualifying reason that the claimant should be subject to a benefits disqualification, the claimant is not disqualified for benefits.

Because the employer did state that Mr. Lewis had received severance dismissal pay, that issue of is remanded to the Claims Division for investigation and adjudication on that issue. Mr. Lewis continues to be eligible to receive unemployment insurance benefits on the job separation provided that he meets all eligibility requirements of Iowa law each week that benefits were claimed.

DECISION:

The representative's unemployment insurance decision dated June 7, 2018, reference 01, is affirmed as modified. The portion of the determination finding the claimant eligible to receive unemployment insurance benefits on the job separation based upon the employer's failure to provide disqualifying information is affirmed. The issue of the claimant's receipt of severance or dismissal pay is remanded to Iowa Workforce Development Benefits Section for investigation and issuance of appealable determination. The adjudicator's determination is affirmed as modified.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn