

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATT JENSEN

Claimant

APPEAL NO. 17A-UI-04839-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

POMEROY AREA BAR AND GRILL CORP

Employer

OC: 03/26/17

Claimant: Respondent (2)

Section 96.6(2) – Timeliness of Protests

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated April 28, 2017, reference 02, that allowed benefits to the claimant and found the employer's protest was untimely. After due notice was issued, a hearing was held by telephone on May 24, 2017. Although duly notified the claimant did not participate. The Employer participated by Ms. Stacy Johnson, Treasure/ Secretary.

ISSUE:

At issue in this matter is whether the employer filed a timely protest as required by law.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: The claimant's notice of claim filed was mailed to the employer's address of record on March 29, 2017 but not received by the employer within ten days. The notice of claim filed was not delivered to the employer's address of record by the US Postal Service until April 14, 2017 which is beyond the ten day statutory limit. The notice of claim contains a warning that any protest must be postmarked or returned not later than ten days from the initial mailing date. The employer immediately contacted Iowa Workforce Development upon receipt of the notice of claim filed to explain it had been received late and to get information on filing a protest. The issue of the claimant's job separation has not yet been investigated or adjudicated at the claims level.

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.

The administrative law judge concludes that the employer was unable to protest within the time limit prescribed by the Iowa Employment Security Law because of delay in the delivery of the notice to the employer by the US Postal Service pursuant to 871 IAC 24.35(2). As soon as the employer became aware of claim filed, the employer immediately acted to notify to the agency of the late arrival of the notice of claim filed and to obtain information on protesting the claim.

The administrative law judge concludes that the employer has established sufficient evidence of its intent to protest any charges to its account. The employer's precluded from filing a timely protest due to the late delivery of the notice of claim by the US Postal Service through no fault of the employer. The issue of Matt Jensen's separation of employment is remanded to the claims section of the Iowa Workforce Development for initial investigation and determination.

DECISION:

The decision of the representative dated April 28, 2017, reference 02, is reversed. The employer's protest is considered timely. The issue of the claimant's job separation is remanded to the claims section of Iowa Workforce Development for initial investigation and determination.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

scn/scn