

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALISON MONTANGE

Claimant

TKC OPTICAL INC

Employer

APPEAL 19A-UI-08509-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/06/19

Claimant: Respondent (2R)

Iowa Code § 96.6(2) – Filing – Timely Protest

STATEMENT OF THE CASE:

Employer filed an appeal from the October 23, 2019 (reference 01) unemployment insurance decision that found employer's protest untimely. The parties were properly notified of the hearing. A telephone hearing was held on November 21, 2019, at 11:00 a.m. Claimant participated. Employer participated through Chris Mamanny, Tiffany Elias, and Kim Luze. Department's Exhibit D-1 was admitted.

ISSUE:

Whether employer filed a timely protest.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Notice of Claim was mailed to 305 Dakota Dunes Boulevard, Dakota Dunes, South Dakota on October 8, 2019. (Exhibit D-1) Employer received the notice of claim prior to the October 18, 2019 due date. (Exhibit D-1) Employer completed and signed the Employer Statement of Protest on October 18, 2019. (Exhibit D-1) Employer contacted Iowa Workforce Development on October 18, 2019 and obtained a fax number for submitting its protest. Employer faxed its protest to the number provided by IWD on October 18, 2019. Employer resubmitted its protest on October 21, 2019 to the fax number listed on the back of the protest. Employer's protest was received by Iowa Workforce Development on October 21, 2019. (Exhibit D-1)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes employer submitted a timely protest.

Iowa Code § 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)(a) 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.

Employer submitted its protest to Iowa Workforce Development on the due date by faxing it to a number provided by IWD. Employer's delay in submitting its protest was due to division misinformation. Therefore, employer's protest was timely.

DECISION:

The October 23, 2019, (reference 01) unemployment insurance decision is reversed. Employer's protest was timely.

REMAND:

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

Adrienne C. Williamson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
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Decision Dated and Mailed

acw/scn