

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LAURIE REHA
Claimant

APPEAL 17A-UI-03491-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

REGENCY NURSING SERVICES INC
Employer

**OC: 02/19/17
Claimant: Respondent (1)**

Iowa Code § 96.6(2) - Timeliness of Protest
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The employer filed an appeal from the March 17, 2017 (reference 02) unemployment insurance decision that found the protest untimely and allowed benefits. After due notice was issued, a hearing was held on April 28, 2017. The claimant, Laurie Reha, participated. The employer, Regency Nursing Services, Inc., participated by Amy Gregson, Director of Nursing. The administrative law judge took official notice of the administrative record. Claimant's Exhibits A and B were admitted.

ISSUES:

Was the employer's protest timely?
Is the employer liable for benefit charges?

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 February 24, 2017. This document states that the Statement of Protest must be received by March 6, 2017. The employer contends it did not receive this notice of claim in a timely manner. Gregson testified that the employer has tried multiple times to change its address and has been unsuccessful. According to Gregson, the Wild Rose Lane address is a former address of the employer. The current tenant or owner of that property collects the employer's mail and passes it on to the employer at its current address.

Gregson testified that the employer received the notice of claim on March 8, 2017. The Employer's Statement of Protest shows Gregson signed the document on March 8, 2017. However, Iowa Workforce Development did not receive this response until March 14, 2017. Gregson explained that the employer was going through a survey at the time, which may have caused this six-day delay. Reha contests the employer's argument that the notice of claim was not received in a timely manner. Reha testified that a former employee also filed for unemployment and the employer received her notice of claim at the Wild Rose Lane address and responded to it in a timely manner.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether employer's protest is timely. The administrative law judge concludes it is not.

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 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). The administrative law judge understands that the process of changing an address of record can be confusing, and Gregson provided reasonable testimony regarding her understanding of the steps the employer has taken to change its address. However, even if the employer did not receive the notice of claim in a timely manner, the employer took six days to submit its statement of protest. The employer's delay in responding to the notice of claim was not due to any agency error or misinformation or any issue with the United States Postal Service. Rather, the testimony indicates this delay was caused by the employer dealing with a survey. While the employer is certainly within its rights to prioritize some business matters over others, it must bear the consequences for those decisions. The employer has failed to file a timely protest. 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 March 17, 2017 (reference 02) 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