

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEVON J HARTLEY
Claimant

KEITH D VILLHAUER ENTERPRISES INC
Employer

APPEAL 22A-UI-03687-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/11/21
Claimant: Respondent (2R)

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

On February 2, 2022, Keith D Villhauer Enterprises Inc (employer/appellant) filed an appeal from the Iowa Workforce Development (“IWD”) decision dated January 28, 2022 (reference 03) that determined employer’s protest could not be accepted because it was untimely and employer’s account may be charged for benefits paid.

A telephone hearing was held on April 11, 2022. The parties were properly notified of the hearing. Devon Hartley (claimant/appellant) did not appear or participate. Employer participated by owner Keith Villhauer. Official notice was taken of the administrative record, including the notice of appeal and statement of protest.

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 the above address on July 16, 2021. That was employer’s correct business address on that date. The notice of claim contains a warning that the Employer Statement of Protest is due ten days from the initial notice date and gave a response deadline of July 26, 2021. The Notice of Claim further states “protest forms submitted to Iowa Workforce Development must be postmarked or faxed by the due date shown above.”

The employer completed and signed the Employer Statement of Protest on July 26, 2021. Employer’s protest was submitted via fax on that same date. Employer did not get a notification that the fax was not successful and did not have to re-send it at a later date. It is unclear why the department did not consider the fax to be received until July 27, 2021.

The claimant’s separation from employment has not yet been the subject of a Benefits Bureau fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the decision dated January 28, 2022 (reference 03) that determined employer's protest could not be accepted because it was untimely and employer's account may be charged for benefits paid is REVERSED.

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:

(a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark on the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

(b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(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.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge has no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten-day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. *E.g. Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that "the submission of any ...appeal...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."

The administrative law judge finds employer successfully submitted the statement of protest via fax on July 26, 2021, the deadline for doing so. The protest was therefore timely. Because the protest was timely this matter is remanded for a determination as to whether the separation from employment was disqualifying and whether employer's account is subject to charge. The Department should also address whether claimant has earned sufficient wages since the separation from employment such that he has requalified for benefits and employer's account is relieved of charges.

The administrative law judge notes employer may wish to sign up for electronic claim notifications from IWD to avoid potential delays in the future. Further information is available at <https://www.iowaworkforcedevelopment.gov/my-iowa-unemployment-insurance-employers-and-agents>.

DECISION:

The decision dated January 28, 2022 (reference 03) that determined employer's protest could not be accepted because it was untimely and employer's account may be charged for benefits paid is REVERSED. The protest was timely.

REMAND:

The separation issue is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and issuance of an unemployment insurance decision. The Department should also address whether claimant has earned sufficient wages since the separation from employment such that he has requalified for benefits and employer's account is relieved of charges.



Andrew B. Duffelmeyer
Administrative Law Judge

April 19, 2022
Decision Dated and Mailed

abd/abd