

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**CHRISTOPHER BROWN**  
Claimant

**APPEAL 22A-UI-05794-SN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BURLINGTON GLASS COMPANY INC**  
Employer

**OC: 02/06/22**  
**Claimant: Respondent (1)**

Iowa Code § 96.6(2) - Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer, Burlington Glass Company Inc., filed a timely appeal from the February 25, 2022, reference 01, decision that granted benefits and found the protest untimely. After due notice was issued, a hearing was held on April 14, 2022. The claimant did not participate. The employer participated through its owner, Matt Haas. The employer was represented by Sara Haas, attorney at law. Exhibit D-1 was received into the record. Official notice was taken of the agency records.

**ISSUE:**

The issue is whether employer's protest is untimely.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant's notice of claim was mailed to the employer's address of record on February 18, 2022. Mr. Haas could not say when the notice of claim first arrived in the employer's mailbox. The employer has two office assistants who drop items which are confidential in nature on Mr. Haas' desk for him to process these items upon his return. Mr. Haas did not receive the notice of claim until February 22, 2022, because he was on a two-week quarantine due to Covid19, which began on February 9, 2022. Mr. Haas handwrote on the employer's protest that it arrived at some point in the preceding week. The notice of claim read in pertinent part, "Protest forms submitted to Iowa Workforce Development must be postmarked or faxed by the due date shown above." The due date written on the notice of claim was February 18, 2022. (Exhibit D-1)

The employer sent its notice of claim response by facsimile on February 22, 2022. The employer sent its protest to the facsimile number listed on the back of the notice of claim. (Exhibit 1) Iowa Workforce Development Department stamped it as received on February 22, 2022.

## REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the employer filed an untimely protest.

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 issuing the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. 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 issued, 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.

Iowa Admin. Code r. 871-24.8(2) provides:

Notifying employing units of claims filed, requests for wage and separation information, and decisions made.

24.8(2) Responding by employing units to a notice of the filing of an initial claim or a request for wage and separation information and protesting the payment of benefits.

a. The employing unit which receives a Form 65-5317, Notice of Claim, or Form 68-0221, Request for Wage and Separation Information, must, within ten days of the date of the notice or request, submit to the department wage or separation information that affects the individual's rights to benefits, including any facts which disclose that the individual separated from employment voluntarily and without good cause attributable to the employer or was discharged for misconduct in connection with employment.

b. The employing unit may protest the payment of benefits if the protest is postmarked within ten days of the date of the notice of the filing of an initial claim. In the event that the tenth day falls on a Saturday, Sunday or holiday, the protest period is extended to the next working day of the department. If the employing unit has filed a timely report of

facts that might adversely affect the individual's benefit rights, the report shall be considered as a protest to the payment of benefits.

c. If the employing unit protests that the individual was not an employee and it is subsequently determined that the individual's name was changed, the employing unit shall be deemed to have not been properly notified and the employing unit shall again be provided the opportunity to respond to the notice of the filing of the initial claim.

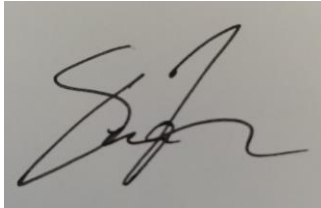
d. The employing unit has the option of notifying the department under conditions which, in the opinion of the employing unit, may disqualify an individual from receiving benefits. The notification may be submitted electronically.

- (1) The Notice of Separation, Form 60-0154, **must be postmarked or received before** or within ten days of the date that the Notice of Claim, Form 65-5317, was mailed to the employer. In the event that the tenth day falls on Saturday, Sunday or holiday, the protest period is extended to the next working day of the department. If a claim for unemployment insurance benefits has not been filed, the Notice of Separation may be accepted at any time. [Emphasis added]

The employer sent its protest by facsimile on February 22, 2022. The delay was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 4.35(2). Rather, the employer's own internal procedures delayed its response. The administrative law judge further concludes that the employer has failed to timely protest pursuant to Iowa Code § 96.6(2), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the claimant's termination of employment. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979); *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979) and *Pepsi-Cola Bottling Company v. Employment Appeal Board*, 465 N.W.2d 674 (Iowa App. 1990).

**DECISION:**

The February 25, 2022, reference 01, decision is affirmed. The employer has filed an untimely protest.

A handwritten signature in black ink, appearing to read 'S. Nelson', is shown on a light gray background.

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Sean M. Nelson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 725-9067

April 26, 2022  
Decision Dated and Mailed

smn/mh