

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANDRE THOMAS
Claimant

APPEAL NO. 19A-UI-09973-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HARVEYS BR MANAGEMENT CO INC
Employer

OC: 06/30/19
Claimant: Respondent (2/R)

Iowa Code Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 11, 2019, reference 04, decision that allowed benefits to the claimant provided he was otherwise eligible, that held the employer's account could be charged for benefits, and that held the employer's protest could not be considered because it was untimely. An appeal hearing has been scheduled for January 14, 2020 and the parties have been notified by hearing notices that were mailed on December 20, 2019. Upon review of Iowa Workforce Development administrative records, the administrative law judge concludes that an appeal hearing is unnecessary and enters the following decision based on Iowa Workforce Development administrative records.

ISSUE:

Whether employer filed a timely protest in response to the notice of claim that was mailed to the employer on July 2, 2019.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: On July 2, 2019, Iowa Workforce Development mailed a notice of claim concerning claimant Andre Thomas to the employer address of record for Harvey's BR Management Company, Inc. The notice of claim contained a warning that any protest must be postmarked, faxed or returned by the due date set forth on the notice, which was July 12, 2019. The notice of claim was received at the employer's address of record in a timely manner, prior to the deadline for protest.

On July 12, 2019, the employer's representative of record, Equifax/Talx, faxed a 12-page protest to the Unemployment Insurance Service Center (UISC). The UISC received the protest materials on July 12, 2019 and date-stamped the materials as received on July 12, 2019. An Iowa Workforce Development representative wrote a proposed fact-finding interview date and time on the notice of claim form that the employer included as part of the protest packet.

After the UISC received the employer's protest materials, Iowa Workforce Development staff then misplaced the employer's protest materials. Somehow, the first nine pages of the employer's 12-page protest ended up attached to the supplemental documents associated with the July 22, 2019, reference 01, decision concerning the same claimant and a different employer. Iowa Workforce Development staff subsequently scanned the Harvey's protest

materials onto the Iowa Workforce Development computer system (Dataworks/Alfresco) as part of the supplemental documents associated with the July 22, 2019, reference 01, decision. It was there that the administrative law judge discovered the employer's protest materials on January 9, 2020 as the administrative law judge prepared for the upcoming appeal hearing.

REASONING AND CONCLUSIONS OF LAW:

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.

Another portion of this same Code section dealing with timeliness of an appeal from a representative's decision states that such an appeal must be filed within ten days after notification of that decision was mailed. In addressing an issue of timeliness of an appeal under that portion of this Code section, the Iowa Supreme Court held that this statute prescribing the time for notice of appeal clearly limits the time to do so, and that compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979). The administrative law judge considers the reasoning and holding of the court to be controlling on this portion of that same Iowa Code section which deals with a time limit in which to file a protest after notification of the filing of the claim has been mailed.

Iowa Administrative Code Rule 871-24.8(2)(a) and (b) provide as follows:

- (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 a 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.

Iowa Administrative Code Rule 871-24.35(1) provides:

Date of submission and extension of time for payments and notices.

- (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 of 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 those outlined in paragraphs 24.35(1)"a" and "b", on the date it is received by the division.

The employer filed a timely protest on July 12, 2019 through the 12-page faxed protest that Iowa Workforce Development received that same day.

Based on the timely protest, this matter will be remanded to the Benefits Bureau for a fact-finding interview regarding the claimant's separation from the employer and/or other appropriate proceedings. The administrative law judge notes in the Agency's records a December 5, 2019 timely employer challenge to a November 8, 2019 Statement of Charges that included a charge for benefits paid to Mr. Thomas. The employer's challenge to the Statement of Charges will need to be addressed by the Benefits Bureau and/or by the Appeals Bureau. Though a Benefits Bureau representative has notified the Appeals Bureau that the underlying claim has been cancelled, and though Agency administrative records accessible to the undersigned administrative law judge include an undated Reference 09 Statement of Fact/Decision Worksheet referencing a cancellation, the Agency administrative records available to the administrative law judge do not include a *decision* granting relief to this employer as requested in the timely protest or the timely challenge to the quarterly statement of charges.

DECISION:

The December 11, 2019, reference 04, decision is reversed. The employer's protest was timely.

This matter is remanded to the Benefits Bureau for a fact-finding interview and/or other appropriate proceedings. The employer's timely challenge to the November 8, 2019 Statement of Charges will need to be addressed by the Benefits Bureau and/or by the Appeals Bureau.

The appeal hearing set for January 14, 2020 is cancelled.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs