

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHAWNA BOLTON
Claimant

AMERISERVE INTERNATIONAL INC
Employer

APPEAL 22A-UI-02691-JD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/22/20
Claimant: Respondent (2R)**

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

On January 12, 2022, the employer filed an appeal from the January 7, 2022, (reference 04) unemployment insurance decision that found the protest untimely and allowed benefits. After due notice was issued, a hearing was held by telephone conference call on February 23, 2022. The claimant did not call the toll-free number listed on the notice of hearing and did not participate. The employer participated through James Westphal, Area Director, Employer's Exhibit 1 and Department's Exhibit D-1 were received into evidence. The administrative law judge took official notice of the administrative record.

ISSUE:

Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The claimant's notice of claim was mailed to employer's address of record on April 7, 2021, and was received within the appeal period. The notice of claim contains a warning that the employer protest response is due ten days from the initial notice date and gave a response deadline of April 19, 2021. The employer faxed a timely notice of protest on April 19, 2021. (Employer's Exhibit 1) The employer's protest was timely filed within the designated appeal period, the claimant's separation from employment has not yet been the subject of a Benefits Bureau fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that employer has filed a timely protest response as by the Iowa Employment Security Law.

Iowa Code § 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.

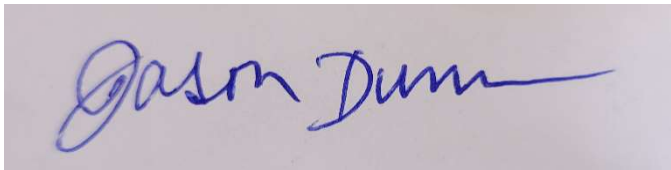
Another portion of this same Code section dealing with timeliness of an appeal from a representative's decision states that such an appeal must be filed within ten days after notification of that decision was mailed. In addressing an issue of timeliness of an appeal under that portion of this Code section, 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). In this case, the employer did not receive the notice of claim until August 28, 2017, one week after the due date. The employer did not have an opportunity to protest the notice of claim because, for some unknown reason, the notice was not received in a timely fashion. Without timely notice of a claim, no meaningful opportunity to respond exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The employer filed the protest on April 19, 2021, the date the protest was due via fax. The employer's protest is timely.

DECISION:

The January 7, 2022, (reference 04) unemployment insurance decision is reversed. The employer has filed a timely protest.

REMAND:

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



Jason Dunn
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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Des Moines, Iowa 50319-0209
Fax (515) 478-3528

March 10, 2022
Decision Dated and Mailed

jd/kmj