

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TIANA R PUGA
Claimant

BRENDA DERR
Employer

APPEAL 19A-UI-06975-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/24/19
Claimant: Respondent (1)

Iowa Code § 96.6(2) – Timeliness of Employer Protest

STATEMENT OF THE CASE:

The employer filed an appeal from the August 23, 2019, (reference 01) 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 September 25, 2019. The claimant did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. The employer participated by Brenda Derr, owner. The administrative law judge took official notice of the administrative record, including the Notice of Claim and employer account information (<https://www.myiowaui.org/UITIPTaxWeb/>). Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

NOTE TO EMPLOYER: If you wish to change the address of record, please access your account at: <https://www.myiowaui.org/UITIPTaxWeb/>. To become a SIDES E-Response participant, you may send an email to iwd-sidesinfo@iwd.iowa.gov. To learn more about SIDES, visit <http://info.uisides.org>.

ISSUE:

Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The employer operates two businesses: Dollhouse Dreams and Miniature Wishes. The claimant worked for this employer and separated on February 21, 2019. The claimant's notice of claim was mailed to the employer's address of record on February 26, 2019. The notice of claim contains a warning that the employer protest response was due ten days from the initial notice date and gave a response deadline of March 8, 2019. No response was received by IWD.

The employer utilizes an accountant as an agent and Ms. Derr was unaware that her accountant had listed its address for the address of record to IWD for unemployment insurance related matters. She verified the contact and address in administrative files was tied to her

accountant. She did not check with her accountant to see if it received the notice of claim or filed a response on behalf of the employer.

The employer updated its address of record with IWD in May 2019. Ms. Derr stated she learned personally of the claim when she received her statement of charges dated August 9, 2019 for the second quarter of 2019. Ms. Derr could not recall what day she received the statement of charges in the mail. She delayed contacting IWD about the statement of charges until August 22, 2019 because she was "busy running a business." She was advised by the IWD advisor to submit a response and did so on August 23, 2019.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that employer has failed to protest response within the time period prescribed by the Iowa Employment Security 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.

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.

Iowa Admin. Code r. 871-24.35(2) provides:

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

24.35(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 division 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 administrative law judge considers the reasoning and holding of that court in that decision 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. The employer has not shown any good cause for not complying with the jurisdictional time limit. The employer confirmed the notice of claim was mailed to the employer's accountant, which was a valid agent and mailing address effective February 26, 2019. The employer did not check with the accountant to see if the claim was received. The employer's choice to designate an agent and its address for IWD mail was a business decision.

Even if the employer's accountant did not receive the notice of claim in the mail on its behalf, the employer had constructive notice of claim when it was mailed the statement of charges on August 9, 2019. If the administrative law judge used that day to begin counting the prescribed ten-day period to respond to the notice of claim, the employer still did not file a timely protest.

The employer's delay in filing its protest was not due to any *Agency error or misinformation or delay or other action of the United States Postal Service* pursuant to Iowa Admin. Code r. 871-4.35(2). No other good cause reason has been established for the delay. 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. Iowa Dep't*

of *Job Serv.*, 276 N.W.2d 373 (Iowa 1979); *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979) and *Pepsi-Cola Bottling Co. v. Emp't Appeal Bd.*, 465 N.W.2d 674 (Iowa Ct. App. 1990).

DECISION:

The August 23, 2019, (reference 01) decision is affirmed. The employer has failed to file a timely protest, and the decision of the representative shall stand and remain in full force and effect.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn