

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HENRY Z KYNE
Claimant

HDS LTD
Employer

APPEAL 221A-UI-01075-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/26/21
Claimant: Respondent (1)**

Iowa Code § 96.6(2) – Timeliness of Protest
STATEMENT OF THE CASE:

Employer/appellant, HDS Ltd., filed an appeal to the initial decision dated December 1, 2021 (reference 05) which allowed benefits and concluded employer failed to file a timely protest to the notice of claim. After proper notice, a telephone hearing was held on February 2, 2022. Claimant/respondent, Henry Kyne, participated. Employer participated through Michael Chamberlain. Department Exhibits 1-2 and Employer Exhibit A were admitted. Official notice was taken of the administrative records.

NOTE TO EMPLOYER: 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:

Did the employer file a timely protest?

FINDINGS OF FACT:

Having reviewed all the evidence in the record, the administrative law judge finds: Claimant worked for this employer until December 31, 2020. Claimant established a claim for unemployment insurance benefits with an effective date of September 26, 2021 in response to subsequent employment.

A notice of claim was mailed to the employer's address of record on September 30, 2021. The notice of claim stated, "[a]s an employer of this claimant within the past 18 months from the effective date of claim, your account may receive charges based upon wages you have paid this claimant unless you provide Iowa Workforce Development with information justifying relief from such charges. Any benefits paid may result in a rate increase to your account." The notice of claim contained a due date of Tuesday, October 12, 2021.

Employer did receive the notice of claim. Employer filed its notice of protest to the claim around October 6, 2021 (Chamberlain testimony). Mr. Chamberlain stated he and Joy Sheffield reviewed the notice of claim and filled it around October 9, 2021. It was given to an employee to mail. The employee had been hired as a driver and filling in doing clerical work. Employer has an internal "outgoing mail" box that it uses to gather mail. Mail is not actually delivered to the post office each day, but rather, can sit for up to a week before the items are mailed. The employee misunderstood Mr. Chamberlain's direction and placed the notice of claim protest in the "outgoing mail" box rather than actually mail it through the postal service. As a result, the

notice of protest sat for approximately ten days before being picked up and mailed on October 19, 2021 (See Department Exhibit 2). No evidence was presented that employer's delay in filing its protest was due to agency error or postal service error.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer failed to file a timely protest.

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 law provides that all interested parties shall be promptly notified about an individual filing a claim. The parties have ten days from the date of mailing the notice of claim to protest payment of benefits to the claimant. Iowa Code § 96.6(2). Another portion of Iowa Code § 96.6(2) dealing with timeliness of an appeal from a representative's decision states 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 has held that this statute clearly limits the time to do so, and compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979). The reasoning and holding of the *Beardslee* court is considered controlling on the portion of Iowa Code § 96.6(2) that deals with the time limit to file a protest after the notice of claim has been mailed to the employer.

The employer did receive the notice of claim within the date. Employer's delay in filing the protest was because of a miscommunication with another employee about what it meant to mail the notice of protest. Employer further chooses to have an "outgoing mail" box on premises but does not physically mail items in it every day, but rather once a week or so. Based on the evidence presented, employer's delay in filing its protest was not due to agency or postal service error pursuant to Iowa Admin. Code r. 871-24.35(2). Employer has not established good cause for its delay in filing the protest under Iowa law. Therefore, employer's protest cannot be accepted as timely filed. The decision allowing benefits and notifying employer it may be charged for benefits remains in effect.

DECISION:

The December 1, 2021 (reference 05) initial decision is affirmed. The employer filed to file a timely protest.



Jennifer L. Beckman
Administrative Law Judge
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February 22nd, 2022
Decision Dated and Mailed

jlb/rs