

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALEXIS J ACEVEDO GONZALEZ
Claimant

PROSPERITY JANITORIAL LLC
Employer

APPEAL 20A-UI-12667-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/22/20
Claimant: Respondent (4)

Iowa Code Chapter 96 – Requalification
Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

On October 13, 2020, Prosperity Janitorial, LLC (employer) filed an appeal from the October 8, 2020, reference 04, unemployment insurance decision that found the protest untimely and allowed Alexis J. Acevedo Gonzalez (claimant) to receive benefits. After due notice was issued, a hearing was scheduled to be held by telephone conference call on December 11, 2020. The employer registered for the hearing; however, no hearing was held, as there was sufficient information in the appeal and administrative record to decide the case without testimony.

ISSUES:

Is the employer's protest timely?
Has the claimant requalified for benefits since the separation?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The claimant separated from employment on December 11, 2019 and filed a claim for benefits effective March 22, 2020. The claimant's weekly benefit amount is \$434.00. The administrative record shows the claimant has earned more than \$4,340.00 in insured wages since the separation and prior to filing the claim for benefits.

The notice of claim was mailed to the employer's address of record on March 27, and was received by the employer on March 31. The employer immediately faxed its protest the same day. 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 6.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer filed a timely protest and the claimant has requalified for benefits since the separation. Therefore, benefits are allowed, provided the claimant is otherwise eligible, and the employer's account shall not be charged.

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.

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

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

(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 department 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 (whether electronically or via the USPS) 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 received the notice of claim within the protest period but has established a legal excuse for filing its protest after the deadline. Iowa Admin. Code r. 871-24.35(2). When the Department allows employers to submit a protest via fax, the Department has the responsibility to make sure its equipment works properly and, in this case, did not. Based on the evidence, the Appeals Bureau has legal jurisdiction to determine whether the employer's account can be relieved from charges. Additionally, the claimant has requalified for benefits since the separation from this employer by earning ten times the weekly benefit amount in insured wages following the separation. See Iowa Code §§ 96.5(1)g and 96.5(2)a. Accordingly, benefits are allowed and the account of the employer shall not be charged.

DECISION:

The October 8, 2020, reference 04, unemployment insurance decision is modified in favor of the appellant. The employer has filed a timely protest and the claimant has requalified for benefits since the separation. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer shall not be charged.



Stephanie R. Callahan
Administrative Law Judge

December 18, 2020
Decision Dated and Mailed

src/scn