

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TINOTENDA GORE
Claimant

CBS STAFFING LLC
Employer

APPEAL 21A-UI-13977-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/27/20
Claimant: Respondent (1)

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

CBS Staffing LLC, the employer/appellant, filed an appeal from the June 7, 2021, (reference 01) unemployment insurance decision that found the employer's protest was not filed on time and allowed benefits. After due notice was issued, a hearing was held on August 4, 2021. The employer participated through Brad Ortmeier, owner. Ms. Gore did not register for the hearing and did not participate. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Gore's notice of claim was mailed to employer's address of record on December 30, 2020. 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 January 11, 2021. The address on file is a valid address for the employer. Mr. Ortmeier testified that the employer filed its protest sometime in January 2021 via fax. The administrative record shows that the protest was received by Iowa Workforce Development on January 14, 2021.

Ms. Gore's separation from employment has not yet been investigated by Benefits Bureau of Iowa Workforce Development.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that employer did not file its protest on time.

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.

The portion of this 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).

Iowa Admin. Code r. 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 [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

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.

In this case, the administrative record shows that the employer's protest was filed on January 14, 2021. The employer testified that its protest was filed sometime in January 2021 but could not provide evidence showing the date its protest was filed. The evidence establishes that the employer's protest was filed on January 14, 2021, which was after the January 11, 2021 due date. The protest was not filed on time.

DECISION:

The employer's protest of the June 7, 2021 notice of claim was not filed on time. The June 7, 2021, (reference 01) unemployment insurance decision is affirmed.



Daniel Zeno
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August 10, 2021
Decision Dated and Mailed

dz/mh