

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SHANE H OBERENDER

Claimant

ALLEMAN CAR CORNER LLC

Employer

APPEAL 17A-UI-03273-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/20/16

Claimant: Respondent (2R)

Iowa Code § 96.6(2) – Timeliness of Appeal

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed an appeal from the February 24, 2017, (reference 02) unemployment insurance decision that denied benefits concluding the employer filed an untimely protest. The employer also filed an appeal from the Statement of Charges dated February 9, 2017. The parties were properly notified about the hearing. A telephone hearing was held on April 18, 2017. The claimant participated personally. The employer participated through Sue Stevens, office manager. Steve Holland, owner, also participated. Department Exhibits D-1 through D-5 were admitted into evidence. 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.

ISSUES:

Is the appeal timely?

Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer has utilized and continues to use Harris and Company CPA for its unemployment vendor and address of record. This address has been a recognized address of record since 2013. The employer also operates using a mailing address of 1399 NE 142nd Ave, or PO Box 3, Alleman, Iowa 50007.

The notice of claim for this claimant was mailed on November 23, 2016 to the employer's address of record at its accountant's office. It is unknown when it was received by Harris and Company and the vendor representative/accountant, Cindy Boatwright, did not attend the hearing or offer a written statement regarding her receipt of any of the employer's mail. Customary practice is that Ms. Boatwright emails the employer when they need to respond to mail received at her location. The notice of claim contained a warning stating that a response was due on or postmarked by December 5, 2016. The employer reports a copy was mailed from the Alleman local post office on November 28, 2016, but no envelope was retained and the

agency did not receive a copy of the employer's response. It was resubmitted on February 21, 2017 (Department Exhibit D-1).

The statement of charges for fourth quarter of 2016 was mailed to the employer address of PO Box 3 Alleman, Iowa 50007 on February 9, 2017 (Department Exhibit D-2). The mail is checked daily by Mr. Holland daily at that address. It is unknown when the employer received the statement of charges but stated it attempted to fax its appeal to the statement of charges on February 21, 2017, to 515-725-2938. The employer believed the appeal had been timely submitted (Department Exhibit D-5), until it had follow up contact with IWD representative, Lisa Kolontar, who said no appeal had been received. It was then resubmitted on March 23, 2017 by email (Department Exhibit D-3).

Then a notice of initial decision, allowing benefits and finding the employer's notice of protest to be untimely was mailed to the employer's address of record at its accountant, on February 24, 2017. The final date to appeal the notice of initial decision was March 6, 2017. The employer did not receive the initial decision. The employer believed the appeal had been timely submitted, until it had follow up contact with IWD representative, Lisa Kolontar, who said no appeal had been received. It was then resubmitted on March 23, 2017 by email (Department Exhibit D-3).

The claimant began employment for Huber Falling in March 2017, earning \$18 per hour and working approximately 40 hours per week. It is unclear from the administrative records if the claimant has requalified since separation from this employer on November 15, 2016.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the employer's appeal is timely. The administrative law judge determines it is.

Iowa Code § 96.6(2) provides:

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 representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any

appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

In this case, the employer/appellant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). It was not until IWD representative, Lisa Kolontar, who was working with the employer on issues related to the statement of charges, made the employer aware of the issue, that the employer had an opportunity to respond to the notice of decision which was unfavorable. The employer then filed its appeal without undue delay. Therefore, the appeal shall be accepted as timely.

The next issue to be considered in this appeal is whether the employer's protest of claim is timely. The administrative law judge determines it is.

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 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 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). The final day to respond to the notice of claim was December 5, 2016. The credible evidence presented is the employer made a good faith effort and filed a protest in a timely manner on November 28, 2017 but the agency did not receive the mailed protest, which was sent from Alleman local post office. Immediately upon receipt of information to that effect, the protest was re-filed. Therefore, the protest shall be accepted as timely.

Given the repeated issues on three recent occasions (notice of protest, initial decision and statement of charges), the employer's use of three different mailing addresses for business related unemployment insurance purposes, the administrative law judge would encourage the employer to confirm the correct mailing address is on file to prevent future incidents, given the time sensitive nature of mail from IWD.

NOTE TO EMPLOYER:

If you wish to change the address of record, please access your account at:
<https://www.myiowaui.org/UITIPTaxWeb/>.

Helpful information about using this site may be found at:
<http://www.iowaworkforce.org/ui/uiemployers.htm> and
<http://www.youtube.com/watch?v=mpCM8FGQoY>

DECISION:

The February 24, 2017, (reference 02) unemployment insurance decision is reversed. The employer has filed a timely protest and appeal.

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

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/rvs