

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

SHERRION M MOORE

Claimant

APPEAL NO. 17A-UI-07034-TNT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ASSOCIATE STAFFING LLC

Employer

OC: 06/04/17

Claimant: Respondent (2R)

Section 96.6(2) – Timeliness of Protests

STATEMENT OF THE CASE:

Associate Staffing LLC, the employer, filed a timely appeal from a representative's decision dated July 5, 2017, (reference 03), that allowed benefits to the claimant and found the employer's protest untimely. After due notice was issued, a hearing was held by telephone on Friday, July 28, 2017. Claimant did not participate. The employer participated through Ms. Barien Jerami, Recruiting Associate. The departments Exhibit D-1 was admitted in the hearing record.

ISSUE:

Did the employer file a timely protest?

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: The notice of claim filed on the claim of Sharrion M. Moore, was mailed to Associate Staffing's address of record on June 9, 2017. The notice, although properly addressed, was not delivered by the US Postal Service until June 23, 2017. which is after the ten-day protest period had expired. Associate Staffing, LLC was immediately notified on June 23, 2017, by their accounting firm, that the notice of claim had just arrived. The employer immediately filed a protest that day.

Subsequently, the company has changed its address of record from PO Box 508, Laurinburg, NC 28353 to the current address of record, 2320 Cascade Pointe Blvd., Charlotte, NC 28208. An earlier attempt to change the address of record had not been successful because the employer had not followed the required procedures. The notice of claim went to Associate Staffing's Accounting Firm. The accounting firm remained the address of record for the company at the time. Ms. Jerami was notified on June 23, 2017 that the notice of claim form had just arrived late via US Postal Service.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes, based upon the evidence in the record that the employer has established that the late filing was not due to employer fault, but that it was due to delay by the US Postal Service pursuant to 871 IAC 24.35(2). Although the notice of claim was mailed to the employer's address of record on June 9, 2017, it did not arrive at the address of record until June 23, 2017 which is beyond the ten-day protest period. When notified that the notice of claim had arrived on June 23, 2017, Associate Staffing, LLC took immediate action to protest the payment of unemployment insurance benefits on the claim of Sherrion M. Moore.

The administrative law judge finds the testimony of Ms. Jerami to be credible and not improbable.

The administrative law judge finds that because the notice of claim was not delivered to the employer until the 10-day protest period had expired, the appellant was deprived of a reasonable opportunity to assert a protest in a timely manner. The employer's failure to file a timely protest within the time prescribed by the Iowa Employment Security Law was not due to the employer, but due to delay of the US Postal Service pursuant to 871 IAC 24.35(2). The employer has established good cause for late filing, the protest is considered timely.

The issue of Sherrion M. Moore's job separation is remanded to the Claims Section of Iowa Workforce Development for initial investigation and determination.

DECISION:

The decision of the representative dated July 5, 2017, (reference 03), is reversed. The employer's protest is considered timely. The issue of the claimant's job separation is remanded to the Claims Section of Iowa Workforce Development for initial investigation and determination.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn