

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BERNARD GATHERS
Claimant

APPEAL NO. 17A-UI-04837-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

POMEROY AREA BAR AND GRILL CORP
Employer

OC: 03/05/17
Claimant: Respondent (2)

Section 96.6(2) – Timeliness of Protests

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated April 28, 2017, reference 05, decision 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 May 24, 2017. Claimant participated. Employer participated by Ms. Stacy Johnson, Secretary Treasurer.

ISSUE:

At issue in this matter is whether the employer filed a timely protest as required by law.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: The claimant's notice of claim was mailed to the employer's address of record on March 13, 2017 but not received by the employer at its address of record until April 14, 2017, which is beyond the ten days. The notice of claim contains a warning that any protest must be postmarked or returned not later than ten days from the initial mailing date. The employer, to get information on filing a protest, immediately notified Iowa Workforce Development to explain that the notice of claim had been delivered late. The protest was filed by the employer on April 21, 2017.

Because of this and other problems with the delivery of mail, the employer changed its address of record to obtain better service from the US Postal Service. The issue of Bernard Gathers job separation has not been investigated or adjudicated at the claims level.

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 the employer failed to effect a timely protest within the time period prescribed by the Iowa Employment Security Law, and the delay was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). Although the notice of claim was mailed to the address of employer's address of record, its delivery was delayed by the US Postal Service and not received by the employer until after the timely had expired. Upon receipt of the notice of claim filed, the employer immediately contacted the Iowa Workforce Development to inform the agency of the late arrival of the notice and to begin the process of effecting a protest of the claim.

Based upon the late delivery of the notice of claim by the US Postal Service and the employer's immediate action thereafter the administrative law judge concludes there was sufficient evidence of intent to protest any potential charges to the employer's account and the protest is considered timely. The issue of Bernard Gather'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 April 28, 2017, reference 05, is reversed. The employer's protest is considered timely. The issue of the claimant's separation from employment 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

scn/scn