

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**ADAM D PRALLE**  
Claimant

**ROCK SOLID MASONRY MIDWEST LLC**  
Employer

**APPEAL 17A-UI-05816-JCT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/23/17  
Claimant: Respondent (2R)**

Iowa Code § 96.6(2) – Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer filed an appeal from the May 22, 2017, (reference 02) unemployment insurance decision that found the protest untimely and allowed benefits. After due notice was issued, a hearing was held by telephone conference call on June 19, 2017. The claimant did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. The employer participated by of Jason Kirschbaum, president. Department's Exhibit D-1 was received. The administrative law judge took official notice of the administrative record, including the Notice of Claim and protest. 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.

**ISSUE:**

Is the employer's protest timely?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant's notice of claim was mailed to the employer's address of record on April 28, 2017. The employer checks its mail every day or every other day and was in town between the period of April 28, 2017 through May 8, 2017 to collect mail. Usually mail from Des Moines to the employer's address takes approximately three days to receive. The employer did not receive the notice of claim in the mail until May 10, 2017, after the prescribed period to respond. On the same day, the employer called IWD to alert of the late receipt and was advised to respond anyway. The employer completed its protest on May 10, 2017, and hand stamped the envelope before dropping it off around 4:30 p.m. on the east side box of the Spirit Lake postal office. For unknown reasons, the envelope was not stamped until May 13, 2017 (Department Exhibit D-1). The claimant's June 2, 2016, separation from employment has not yet been the subject of a Benefits Bureau fact-finding interview. The administrative records do not reflect that the claimant has requalified for benefits since this separation.

**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 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 did not have an opportunity to protest the notice of claim because the notice was not received in a timely fashion. Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). In this case, the employer filed its notice of protest on May 13, 2017, after the prescribed period to respond. The employer did not receive the notice of claim until May 10, 2017, after due date to respond, and then attempted to mail its response on the same day. For unknown reasons, it was not postmarked until May 13, 2017. Based on the evidence presented, the administrative law judge concludes the delay was due to *delay or other action of the United States Postal Service* pursuant to Iowa Admin. Code r. 871-24.35(2).

The employer made a good faith effort to file the protest within one day of receipt of the notice of claim. Therefore, the protest shall be accepted as timely.

**DECISION:**

The May 22, 2017, (reference 02) unemployment insurance decision is reversed. The employer has filed a timely protest.

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

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

jlb/rvs