

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HOLLY L HENDERSON
Claimant

BOMBSHELL BETTYS SALON WEST LLC
Employer

APPEAL 18A-UI-10459-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/26/18
Claimant: Respondent (2R)**

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Bombshell Betty's Salon West, LLC (employer) filed an appeal from the October 12, 2018, reference 04, 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 November 2, 2018. Holly L. Henderson (claimant) participated. The employer participated through Owner Jaqueline Suliveres. The Employer's Exhibit 1 was received. The administrative law judge took official notice of the administrative record, including the Notice of Claim and protest.

ISSUE:

Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The claimant's notice of claim was mailed to employer's address of record on September 4, 2018. 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 September 14, 2018. The employer did not file a protest response until October 8, 2018, which is after the ten-day period had expired because the United States Postal Service (USPS) delivered the notice of claim to the wrong mailbox. The employer did not receive the notice of claim until the neighbor to whom it was delivered left it at her front door on October 6, 2018. Whether the claimant's separation on August 31, 2018 qualifies her for benefits has not yet been investigated or adjudicated by the Benefits Bureau of Iowa Workforce Development (IWD).

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that employer has shown good cause for filing its protest after the ten-day statutory timeframe.

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.

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.

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 due to an error of the USPS. Without timely notice of a claim, no meaningful opportunity for a protest exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The employer filed the protest within ten days of receipt of the notice of claim. Therefore, the protest shall be accepted as timely.

The issue of whether the claimant's August 31, 2018 separation from employment qualifies her for unemployment insurance benefits is remanded to the Benefits Bureau of IWD for a fact-finding interview and determination.

DECISION:

The October 12, 2018, reference 04, unemployment insurance decision is reversed. The employer has filed a timely protest.

REMAND:

The issue of whether the claimant's August 31, 2018 separation from employment qualifies her for unemployment insurance benefits is remanded to the Benefits Bureau of IWD for a fact-finding interview and determination.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn