

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KAITLYN S WERNER
Claimant

JAM EQUITIES OF WATERLOO LLC
Employer

APPEAL 20A-UI-01595-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/12/20
Claimant: Respondent (1)

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

On February 21, 2020, JAM Equities of Waterloo, LLC (employer) filed an appeal from the February 11, 2020, reference 02, unemployment insurance decision that found the protest untimely and allowed Kaitlyn S. Werner (claimant) to receive unemployment insurance benefits. After due notice was issued, a hearing was held by telephone conference call on March 10, 2020. The claimant participated personally. The employer participated through Asif Poonja, Manager. The administrative law judge took official notice of the administrative record, including the notice of claim and protest, and the employer's MyIowaUI account information and Dataworks information.

ISSUE:

Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The notice of claim was mailed to employer's address of record in Chicago, Illinois on January 22, 2020. The employer's address of record has not been changed since September 17, 2018, when Asif Poonja, Manager, changed it to the Chicago address. 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 February 3.

The employer signed the protest on January 26, but did not file the protest response until February 5, which is after the ten-day period had expired. The employer explained in its email to the agency, which accompanied the protest, that Poonja had been on medical leave from January 31 through February 5 and they were just getting caught up after his absence. Poonja had not assigned anyone to handle his job duties in his absence.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that employer has failed to file protest response within the time period prescribed by the Iowa Employment Security 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.

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.

Another portion of this same Code section dealing with timeliness of an appeal from a representative's decision states that such 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 held that this statute prescribing the time for notice of appeal clearly limits the time to do so, and that compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979). The administrative law judge considers the reasoning and holding of that court in that decision to be controlling on this portion of that same Iowa Code section which deals with a time limit in which to file a protest after notification of the filing of the claim has been mailed.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how the disputed factual issues were resolved. After assessing the credibility of the witnesses who testified during the hearing, the reliability of the evidence submitted, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the agency records to have more weight than Poonja's testimony. Poonja provided inconsistent and contradictory testimony throughout the hearing. Poonja's initial argument that the agency sent the notice of claim to wrong address is not credible. Review of agency documents shows that Poonja never changed the employer's mailing address to a Des Moines address. He also did not reference an incorrect address in his email to the agency on February 5. Poonja's argument that he did not actually receive the notice of claim until February 5 is not credible as he recorded the date he signed it as January 26.

The employer failed to file the protest by the deadline and has not established that the delay was due to any error by or misinformation from the agency or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). As the employer has failed to timely protest pursuant to Iowa Code § 96.6(2), the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the claimant's separation from employment. See, *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979); *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979) and *Pepsi-Cola Bottling Co. v. Emp't Appeal Bd.*, 465 N.W.2d 674 (Iowa Ct. App. 1990).

DECISION:

The February 11, 2020, reference 02, unemployment insurance decision is affirmed. The employer has failed to file a timely protest response, and the decision of the representative shall stand and remain in full force and effect.



Stephanie R. Callahan
Administrative Law Judge

March 20, 2020
Decision Dated and Mailed

src/scn

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>

Additionally, if you wish to become a SIDES E-Response participant, you may send an email to iwd-sidesinfo@iwd.iowa.gov.

To learn more about SIDES, visit <http://info.uisides.org>.