

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CACIA MOON
Claimant

Z-BA LLC
Employer

APPEAL 17A-UI-09184-DB

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/30/17
Claimant: Respondent (2R)

Iowa Code § 96.6(2) - Timeliness of Appeal and Protest

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the June 23, 2017 (reference 03) unemployment insurance decision which found that the employer's protest cannot be accepted because it was not timely. The parties were properly notified of the hearing. An in-person hearing was held in Des Moines, Iowa on September 26, 2017. The claimant, Cacia Moon, did not participate. The employer, Z-Ba Inc., participated through witness Nasrin Ghorbani. Employer's Exhibits 1 – 3 were admitted. The administrative law judge took official notice of the claimant's unemployment insurance records.

ISSUES:

Did the employer file a timely appeal?
Did the employer file a timely protest?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

A notice of claim was mailed to the employer on May 24, 2017. See Exhibit 1. It was mailed after the due date that the employer's statement of protest was to be returned to Iowa Workforce Development had already expired. The employer did not receive a notice of claim in time to make a timely protest. Claimant's bookkeeper contacted Iowa Workforce Development and was told there was nothing that could be done because the protest was too late.

Employer sent in a late statement of protest due to a voluntary quit; however, a decision dated June 23, 2017 (reference 03) was issued finding that the employer's protest was too late. The employer did not receive a copy of the decision dated June 23, 2017 (reference 03) as the employer's listed address on the decision does not include the employer's suite number. The employer first became aware of the decision dated June 23, 2017 (reference 03) when Ms. Ghorbani visited the Iowa Workforce Development office in person. Employer filed an appeal that same day Ms. Ghorbani visited the office on September 7, 2017. The employer had received the statement of charges for the second quarter of 2017, which is what prompted Ms. Ghorbani to visit the local office.

The claimant's separation from employment has not yet been the subject of a Benefits Bureau fact-finding interview. Whether the claimant was able to and available for work due to her self-employment has not yet been the subject of a Benefits Bureau fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes employer's appeal is timely and the employer's protest is timely.

Iowa Code § 96.6(2) provides:

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 representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding § 96.8, subsection 5.

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 employer did not have an opportunity to file a timely appeal to the decision dated June 23, 2017 (reference 03) because it never received a copy of the decision. An appeal was filed the same day the employer learned that the decision existed. As such, the appeal shall be considered timely.

The employer did not have an opportunity to protest the notice of claim because the notice was not received by employer in a timely fashion. It was mailed to the employer after the due date had already expired. This was through no fault of the employer. Without timely notice, no meaningful opportunity for appeal exists. 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. See also *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). Further delay existed because when the employer's bookkeeper contacted Iowa Workforce Development she was told there was nothing that could be done.

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 employer's protest was further delayed by division misinformation. Therefore, the protest shall be accepted as timely.

DECISION:

The employer has filed a timely appeal. The employer has filed a timely protest. The June 23, 2017 (reference 03) unemployment insurance decision is reversed.

REMAND: The separation issue delineated in the finding of fact is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision. The availability issue related to claimant's self-employment as delineated in the finding of fact is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs