

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DONNA L EBERLING
Claimant

DRIVELINE RETAIL MERCHANDISING INC
Employer

APPEAL 22A-UI-00988-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/28/21
Claimant: Respondent (2R)**

Iowa Code § 96.6(2) - Timeliness of Protest

STATEMENT OF THE CASE:

Employer, Driveline Retail Merchandising, filed an appeal from the November 23, 2021 (reference 03) unemployment insurance decision that granted benefits to claimant, so long as they meet all other eligibility requirements due to finding employer's protest untimely as it was submitted 04/13/21, which is after the 04/12/21 deadline. The parties were properly notified of the hearing. A telephone hearing was held on February 1, 2022. Claimant, Donna Eberling, participated. Employer participated through Chelsea Freafier, human resources clerk.

Official notice was taken of the administrative file and the contents therein. There were no exhibits.

ISSUE:

Did the employer file a timely protest?

FINDINGS OF FACT:

Having heard the testimony and reviewed the evidence in the record, the undersigned finds:

The Notice of Claim was mailed to employer at its correct address on April 1, 2021. Employer timely received the Notice of Claim. Employer completed and signed the Statement of Protest but did not enter a date when so done. The Notice of Claim lists a due date of April 12, 2021.

Employer's protest was submitted via fax on April 12, 2021. The protest has the bottom half of a fax caption at the top of the page, showing it was faxed on April 12, 2021. The protest was timely received, even though the IWD Customer Service stamp date shows the next day, April 13, 2021.

Claimant's separation from employment has not yet been the subject of a Benefits Bureau initial interview and decision.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes employer's protest was 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.

Iowa Admin. Code r. 871-24.35(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark on the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

(b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

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.

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 the Iowa Supreme 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.


Employer received the Notice of Claim on the due date. The protest was faxed, came in to IWD, and was received by IWD all on the due date. As such, employer's protest is timely.

DECISION:

The November 23, 2021 (reference 03) unemployment insurance decision is **REVERSED**. Employer's protest was timely.

REMAND:

The separation issue is remanded to the Benefits Bureau of Iowa Workforce Development for an initial interview and decision.



Darrin T. Hamilton
Administrative Law Judge

February 25, 2022
Decision Dated and Mailed

dh/mh