

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

**ABBAY L PERKINS**  
Claimant

**APPEAL NO. 19A-UI-04622-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BURTIS CORE INC  
THE BRASS TAP**  
Employer

**OC: 12/16/18  
Claimant: Respondent (1)**

Iowa Code Section 96.6-2 - Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer filed an appeal from the quarterly statement of charges that was mailed to the employer on May 9, 2019 for the calendar quarter that ended March 31, 2019. The Appeals Bureau docketed assigned a reference 05 designation to the appeal from the quarterly statement of charges for docketing purposes and treated the appeal from the statement of charges as a protest from the notice of claim that was mailed to the employer on December 18, 2018. After due notice was issued, a hearing was held by telephone conference call on July 2, 2019. Claimant Abbey Perkins participated. Walter Burtis represented the employer. Exhibits 1 and 2 and Department Exhibits D-1, D-2 and D-3 were received into evidence.

**ISSUE:**

Whether the employer's protest of the claim for benefits was timely.

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: The employer is Burtis Core, Inc., doing business as The Brass Tap. On December 18, 2018, Iowa Workforce Development mailed a notice of claim to the employer's address of record concerning the unemployment insurance claim Abbey Perkins established effective December 16, 2018. The notice of claim contained a warning that any protest must be postmarked, faxed or returned by the due date set forth on the notice, which was December 28, 2018. James Burtis, General Manager, was the person with the employer responsible for responding to the notice of claim. The notice of claim was received at the employer's address of record in a timely manner, prior to the deadline for protest. The employer did not transmit a protest in response to the notice of claim by the December 28, 2018 and Iowa Workforce Development did not receive a protest by the December 28, 2018 deadline.

The employer did not follow up on the matter of Ms. Perkins' claim for benefits until after the employer received the quarterly statement of charges that Iowa Workforce Development mailed to the employer on May 9, 2019 for the quarter that ended March 31, 2019. That quarterly statement of charges indicated that the employer's account had been charged \$1,513.50 for

benefits paid to Ms. Perkins during the first quarter of 2019. On June 6, 2019, James Burtis contacted Iowa Workforce Development by email to challenge the statement of charges. Mr. Burtis attached a notice of claim form that he had completed and signed that same day.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 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(1) provides:

Date of submission and extension of time for payments and notices.

(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 of 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 those outlined in paragraphs 24.35(1)"a" and "b", on the date it is received by the division.

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 the court 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.

Iowa Code section 96.7(2)a(6) provides:

2. Contribution rates based on benefit experience.

a. (6) Within forty days after the close of each calendar quarter, the department shall notify each employer of the amount of benefits charged to the employer's account during that quarter. The notification shall show the name of each individual to whom benefits were paid, the individual's social security number, and the amount of benefits paid to the individual. An employer which has not been notified as provided in section 96.6, subsection 2, of the allowance of benefits to an individual, may within thirty days after the date of mailing of the notification appeal to the department for a hearing to determine the eligibility of the individual to receive benefits. The appeal shall be referred to an administrative law judge for hearing and the employer and the individual shall receive notice of the time and place of the hearing.

The employer's protest was untimely. The employer received the notice of claim in a timely manner in December 2018. The weight of the evidence indicates that the employer did not transmit a protest by the December 28, 2018 protest deadline or at any time prior to the June 6, 2019 email contact in response to the quarterly statement of charges. The employer did not keep a copy of the purported December 2018 protest. The employer did not provide any proof whatsoever that the employer did in fact transmit a protest in December 2018 or at any time prior to the June 6, 2019 email correspondence. Had the employer submitted a protest in response to the notice of claim, and had Iowa Workforce Development received a protest in response to the notice of claim, the Agency would have docketed the protest and would have promptly scheduled a fact-finding interview. The employer's failure to follow up on the matter for several months after the purported protest constituted unreasonable delay and lends no support to the employer's argument that the employer submitted a protest in December 2018. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case. See Iowa Administrative Code rule 871-24.35(2)(c). The Agency's initial determination that the employer's account may be charged for benefits in connection with the claim remains in effect.

**DECISION:**

The employer received the notice of claim in a timely manner, but submitted an untimely protest. The employer's account may be charged for benefits in connection with the claim. The claimant is eligible for benefits provided she meets all other eligibility requirements.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs