

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DAVID M WHITAKER
Claimant

CITY OF AMES
Employer

APPEAL 21A-UI-18983-S2-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/04/21
Claimant: Respondent (4)

Iowa Code § 96.6(2) – Timeliness of Protest
Chapter 96 – Requalification

STATEMENT OF THE CASE:

On August 25, 2021, the employer filed an appeal from the August 23, 2021, (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 October 19, 2021. Claimant David M. Whitaker did not register for the hearing and did not participate. Employer City of Ames participated through human resources officer Krista Hammer. Employer's Exhibits 1 and 2 were admitted into the record. The administrative law judge took official notice of the administrative record, including the Notice of Claim and Statement of Protest.

ISSUE:

Is the employer's protest timely?

FINDINGS OF FACT:

A Notice of Claim was submitted electronically to the employer's SIDES account on July 6, 2021. Employer did not receive the alert notifying it of the notice of claim. Ms. Hammer noticed the claim while responding to a different employee's notice of claim. She immediately filed the Statement of Protest, on August 18, 2021, after the due date provided. See Exhibit 1.

Since separating from this employer in May 2020, and prior to establishing the claim for benefits that was effective July 4, 2021, the claimant worked in and was paid wages for insured work that well exceeded 10 times his \$601.00 weekly benefit amount.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer filed a timely protest and the claimant has requalified for benefits. Benefits are allowed and the employer's account shall not be charged.

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:

(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 by any means other than the United States postal service 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.

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). Employer has established a legal excuse for filing its protest after the deadline, as it did not receive the initial claim. Iowa Admin. Code r. 871-24.35(2). The claimant has requalified for benefits since the separation from this employer by earning ten times the weekly benefit amount in insured wages following the separation. See

Iowa Code §§ 96.5(1)g and 96.5(2)a. Accordingly, benefits are allowed and the account of the employer shall not be charged.

DECISION:

The August 23, 2021, (reference 04) unemployment insurance decision is modified in favor of the appellant. Employer filed a timely protest. Claimant has requalified for benefits since the separation. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer shall not be charged.



Stephanie Adkisson
Administrative Law Judge

October 28, 2021
Decision Dated and Mailed

sa/ol