

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DASHAWN D ROBERTSON
Claimant

PACKER'S SANITATION SERVICE INC
Employer

APPEAL 19A-UI-04976-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/19/19
Claimant: Respondent (1)

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

The employer/appellant, Packers Sanitation Services Inc., filed an appeal from the June 10, 2019 (reference 04) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits and concluded the employer did not file a timely protest of claim. The parties were properly notified about the hearing. A telephone hearing was held on July 16, 2019. The claimant did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. The employer participated through Marissa Rowen, office coordinator for the Waterloo location.

The administrative law judge took official notice of the administrative records including the notice of claim. Employer Exhibit 1 was admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

NOTE TO EMPLOYER: 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>. If you wish to change the address of record, please access your account at: <https://www.myiowaui.org/UITIPTaxWeb/>.

ISSUE:

Is the employer’s protest timely?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The claimant's notice of claim was mailed to employer's address of record on May 24, 2019. The notice of claim contained a warning that the employer protest response is due ten days from the initial notice date and gave a response deadline of June 3, 2019. There is no evidence that the employer did not receive the notice of claim within the ten-day period. The employer stated it filed a protest response on June 6, 2019, which is after the ten-day period had expired. No copy of the notice of protest was provided by the employer or was available in the administrative

file, but a copy of a fax cover sheet purportedly submitted with the claim protest represented a fax being sent on June 6, 2019 (Employer Exhibit 1).

The employer utilizes its corporate office in Kieler, Wisconsin as the address of record. Ms. Rowen works in the Waterloo location and had no information available about the Kieler, Wisconsin office's handling of IWD mail, or who responded on behalf of the employer to the notice of claim.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that employer has failed to protest response within the time period prescribed by the Iowa Employment Security 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. 871-24.8(2) provides:

Notifying employing units of claims filed, requests for wage and separation information, and decisions made. 24.8(2) Responding by employing units to a notice of the filing of an initial claim or a request for wage and separation information and protesting the payment of benefits. a. The employing unit which receives a Form 65-5317, Notice of Claim, or Form 68-0221, Request for Wage and Separation Information, must, within ten days of the date of the notice or request, submit to the department wage or separation information that affects the individual's rights to benefits, including any facts which disclose that the individual separated from employment voluntarily and without good cause attributable to the employer or was discharged for misconduct in connection with employment. b. The employing unit may protest the payment of benefits if the protest is postmarked within ten days of the date of the notice of the filing of an initial claim. In the event that the tenth day falls on a Saturday, Sunday or holiday, the protest period is extended to the next working day of the department. If the employing unit has filed a timely report of facts that might adversely affect the individual's benefit rights, the report shall be considered as a protest to the payment of benefits. c. If the employing unit protests that the individual was not an employee and it is subsequently determined that the individual's name was changed, the employing unit shall be deemed to have not been properly notified and the employing unit shall again be provided the opportunity to respond to the notice of the filing of the initial claim. d. The employing unit has the option of notifying the department under conditions which, in the opinion of the employing unit, may disqualify an individual from receiving benefits. The notification may be submitted electronically. (1) The Notice of Separation, Form 60-0154, must be postmarked or received before or within ten days of the date that the Notice of Claim, Form 65-5317, was mailed to the employer. In the event that the tenth day falls on Saturday, Sunday or holiday, the protest period is extended to the next working day of the department. If a claim for unemployment insurance benefits has not been filed, the Notice of Separation may be accepted at any time.

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. The final day to file a protest to the claim was June 3, 2019. This date is clearly listed on the notice of claim. The employer stated it filed a protest on June 6, 2019. The employer has not shown any good cause for not complying with the jurisdictional time limit. Therefore, the administrative law judge is without jurisdiction to entertain any appeal regarding the separation from employment.

DECISION:

The June 10, 2019, (reference 04) unemployment insurance decision is affirmed. The employer has failed to file a timely protest response, and the unemployment insurance decision shall stand and remain in full force and effect.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn