

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

IAN MOSSBERG
Claimant

BARCON INC
Employer

APPEAL 22A-UI-03562-JD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/12/21
Claimant: Respondent (2R)**

Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On January 25, 2022, the employer filed an appeal from the January 20, 2022, (reference 03) 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 March 11, 2022. The claimant did not call the toll-free number listed on the notice of hearing and did not participate. The employer participated through Megan Wright, Office Manager. The administrative law judge took official notice of the administrative record.

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 December 20, 2021, and was received by employer within ten days. The notice of claim contains a warning that the employer protest response is due ten days from the initial notice date and gave a response deadline of December 30, 2021. The employer filed its protest December 28, 2021, by submitting it to the USPS. The employer's protest was incorrectly stamped with the date of January 4, 2021, with a receipt date of January 2, 2022. Since the department did not scan the actual envelope with the postmarked envelope into the system the employer's testimony that they mailed their protest on December 28, 2021, is credible and their appeal is considered timely. The claimant's separation from employment has not yet been the subject of a Benefits Bureau fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that employer has filed a timely protest response as required by the Iowa Employment Security Law.

Iowa Code § 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.

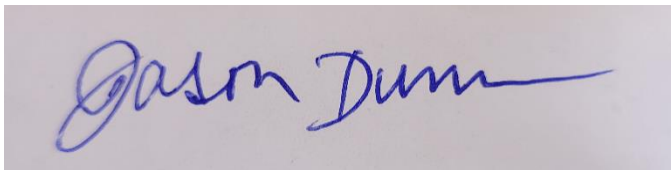
The employer's testimony that they mailed its notice of protest on December 28, 2021, is credible. IWD Benefits Bureau routinely fails to scan and retain the envelopes that would provide direct evidence of when employer's notices are mailed. In the absence of any direct evidence to contradict the employer's claim and the fact that that IWD stamped the incorrect date of January 4, 2021, as the date of postmark imputes further credibility to the employer's testimony. Therefore, the protest shall be accepted as timely.

DECISION:

The January 25, 2022, (reference 03) unemployment insurance decision is reversed. The employer has filed a timely protest.

REMAND:

The separation issue is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision.



Jason Dunn
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

March 31, 2022
Decision Dated and Mailed

jd/mh