

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JASON L BREASHEARS
Claimant

APPEAL NO. 21A-UI-10738-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC
Employer

OC: 05/03/20
Claimant: Respondent (2R)

Iowa Code Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 5, 2021, reference 03, decision that allowed benefits to the claimant provided he was otherwise eligible, that held the employer's account could be charged for benefits, and that held the employer's protest could not be considered because it was untimely. After due notice was issued, a hearing was held by telephone on July 1, 2021. The claimant did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. Sarah Fiedler represented the employer. Exhibit 1, the October 1, 2020 SIDES confirmation, Exhibit 2, the March 9, 2021, SIDES confirmation, and Exhibit 6, Applicant Notes, were received into evidence. The administrative law judge took official notice of the additional information contained in the SIDES system.

ISSUE:

Whether the employer's protest of the claim for benefits was timely.
Whether there is good cause to deem the employer's late protest as timely.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The employer has elected to receive electronic notice of claims via the State Information Data Exchange System (SIDES). On October 1, 2020, Iowa Workforce Development issued notice to the employer of the claimant's September 27, 2020 additional claim for benefits. The notice of claim included an October 13, 2020 protest deadline. The IWD SIDES records do not include a response from the employer prior to March 9, 2021. However, the employer has provided SIDES confirmation documentation reflecting an employer protest successful submitted on October 1, 2020 at 12:53 p.m. See Exhibit 1. The employer has also submitted date-stamped notes reflecting the employer's review of the notice of claim on October 1, 2020.

On March 9, 2021, IWD issued a second notice of claim to the employer via SIDES regarding the same September 27, 2020 additional claim. The notice of claim included a March 19, 2020 protest deadline. IWD SIDES records reflect receipt of an employer protest on March 9, 2021. The employer has submitted SIDES confirmation documentation reflecting an employer protest

successful submitted on March 9, 2021, as well date-stamped notes reflecting the employer's review of the notice of claim on March 9, 2021.

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.

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 Administrative Code Rule 871-24.8(2)(a) and (b) provide as follows:

- (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 a 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.

Iowa Administrative Code Rule 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.

The evidence establishes a timely protest transmitted via SIDES on October 1, 2020. The employer submitted, in the form of the SIDES confirmation, reliable and credible proof of successful transmittal of a protest via SIDES on October 1, 2020. It remains unclear why the IWD SIDES records do not acknowledge the October 1, 2020 timely protest.

This matter will be remanded to the Benefits Bureau for a fact-finding interview and decision on the merits concerning the September 2020 separation.

DECISION:

The April 5, 2021, reference 03, decision, is reversed. The employer's protest was timely. This matter is **remanded** to the Benefits Bureau for a fact-finding interview concerning the September 2020 separation.



James E. Timberland
Administrative Law Judge

July 15, 2021
Decision Dated and Mailed

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