

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LAWRENCE D GRAY
Claimant

TEMP ASSOCIATES IOWA INC
Employer

APPEAL 22A-UI-05215-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/18/21
Claimant: Respondent (2R)**

Iowa Code § 96.6(2) - Timeliness of Protest

STATEMENT OF THE CASE:

Employer/appellant, Temp Associates-Iowa, Inc., appealed the February 16, 2022 (reference 06) unemployment insurance decision that granted benefits to claimant, so long as they meet all other eligibility requirements due to finding employer's protest of the 09/09/20 separation as untimely as it was submitted 09/08/21, which is not within ten days of 07/27/21. The parties were properly notified of the hearing. A telephone hearing was held on April 7, 2022. Claimant, Lawrence Gray, personally participated. Employer participated through Sue Watkins, branch manager. Judicial notice was taken of the administrative records, including claimant's attachments to the appeal. Department's D-1 and Employer's R-1, R-2 were admitted as exhibits, without objection.

ISSUE:

Did the employer file a timely protest?

FINDINGS OF FACT:

Having heard the testimony and reviewed the evidence in the record, the undersigned finds:

The Notice of Claim was mailed to employer on 07/27/2021. Employer timely received the Notice of Claim on or before 08/02/2021. Ms. Watkins filled out the protest, signed, and dated the document 08/02/2021. The Notice of Claim lists a due date of 08/06/2021. (See D-1).

Employer emailed the protest on 08/02/2021, receiving a confirmation of the email being received the same date. (See R-1, R-2, and appeal attachments). The protest was timely received on 08/02/2021, even though the IWD Customer Service stamp date shows late and received 09/08/2021.

Claimant's separation from employment has not yet been the subject of a Benefits Bureau initial interview and decision.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes employer's protest was timely.

Iowa Code § 96.6(2) provides:

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 on 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 [United States Postal Service or the State Identification Data Exchange System (SIDES)], 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.

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 Iowa Supreme 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.

Employer received the Notice of Claim prior to the due date. The protest was emailed, came in to IWD, and was received by IWD on 08/02/21, prior to the due date of 08/06/21, with a confirmation email sent on 08/02/21 that the email was received (the email containing the protest). Received means when the email arrives at IWD, not when it is seen, or addressed or stamped received from the email inbox. See Iowa Admin. Code r. 871-24.35(1)(c) set forth above. The Iowa Rules of Civil Procedure Rule 1.442(2) addresses this by stating, "Service by electronic

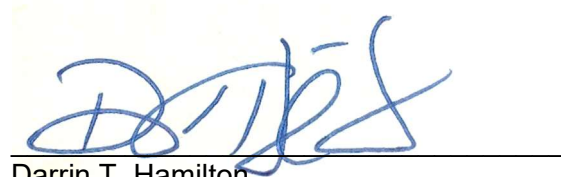
means is complete upon transmission, unless the party making service learns that the attempted service did not reach the person to be served.” As such, employer’s protest is timely.

DECISION:

The February 16, 2022, (reference 06) unemployment insurance decision is **REVERSED**. Employer’s protest was timely.

REMAND:

The separation issue is remanded to the Benefits Bureau of Iowa Workforce Development for an initial interview and decision.



Darrin T. Hamilton
Administrative Law Judge

April 13, 2022
Decision Dated and Mailed

dh/kmj