

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MERIM PAJIC
Claimant

A & A DELIVERY LLC
Employer

APPEAL NO. 22A-UI-03605-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/26/21
Claimant: Respondent (1)**

Iowa Code Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

On January 21, 2022, the employer filed a timely appeal from the January 20, 2022, reference 01, 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 conference call on March 10, 2022. Claimant, Merim Pajic participated. Adis Smajlovic represented the employer. Department Exhibits D-1 and D-2 were received into evidence.

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 and to provide electronic response to notice of claims via the SIDES system. On December 31, 2021, Iowa Workforce Development posted a notice of claim concerning the above claimant to the employer's SIDES account and sent an email alert to the email address the employer had provided for that purpose. The SIDES notice of claim provided a January 13, 2022 deadline for the employer's response. The email address the employer provided for receipt of SIDES posting alerts is the business owner's wife's Gmail address. That person used to perform human resources duties for the employer, but no longer performs those duties. The employer has not updated its SIDES account information to provide a different email address for purposes of receiving alerts to SIDES postings. On January 18, 2022, an unidentified employer representative accessed the employer's SIDES account, entered the protest information and electronically submitted the protest. When the employer signed up for the SIDES system, IWD provided the following notice to the employer:

When you become a SIDES/E-Response participant, you will begin receiving all notice of claims electronically and will no longer receive paper notice of claims by mail. ...

Request for withdrawal from SIDES or to make any future changes to this email address, you will need to contact IWD-SIDESinfo@iwd.iowa.gov

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.

[Emphasis added.]

Iowa Administrative Code Rule 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(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 employer's protest was untimely. The employer elected to receive electronic notice of claims via the SIDES system. The employer received timely notice of the claim via the SIDES system. Iowa Workforce Development provided a timely email alert of the SIDES posting of the notice of claim and directed that email alert to the email address designated by the employer. The employer had a reasonable opportunity to file a protest by the January 13, 2022 protest due day, but delayed action on the matter on January 18, 2022. The late filing of the protest was not attributable to Iowa Workforce Development error or misinformation or to delay or other action of the United States Postal Service. Accordingly, there is not good cause to treat the late protest as a timely protest. Because the protest was untimely, the administrative law judge lacks jurisdiction to disturb the Agency's initial determination regarding the nature of the claimant's separation from the employment, the claimant's eligibility for benefits, or the employer's liability for benefits. The Agency's initial determination of the claimant's eligibility for benefits and the employer's liability for benefits shall remain in effect.

DECISION:

The January 20, 2022, reference 01, decision is affirmed. The employer's protest was untimely. The claimant is eligible for benefits, provided the claimant meets all other eligibility requirements. The employer's account may be charged for benefits.



James E. Timberland
Administrative Law Judge

March 25, 2022
Decision Dated and Mailed

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