

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JACQUE A LAURENT
Claimant

ENGLISH ESTATES INC
Employer

APPEAL 22A-UI-04264-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/19/21
Claimant: Respondent (1)**

Iowa Code § 96.6(2) - Timeliness of Protest

STATEMENT OF THE CASE:

Employer, English Estates, Inc., appealed the February 1, 2022 (reference 05) 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 separation from employment was untimely as it was submitted 01/11/22, which is not within 10 days of 12/23/22, being due on 01/03/22. The parties were properly notified of the hearing. A telephone hearing was held on March 18, 2022. Claimant, Jacque Laurent, participated. Employer participated through Brooke Fritchen, general manager and Alex Lacriox, human resources, and party representative. Official notice was taken of the administrative record, including the fact finding documents the parties were noticed regarding.

ISSUE:

Whether employer filed 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 at its last known address on 12/23/2021. The Notice of Claim lists a due date of 01/03/22. Employer does not know when the Notice of Claim was received. This is due to the employer having COVID-19 protocol in place wherein some employees are working from home, Ms. Lacriox being one of them. For those employees, Ms. Lacriox, included, would come into the workplace once a week to retrieve any mail and other work-related items that have come into the workplace since checking in from the week prior to take home to address. The best that can be sorted out is Ms. Lacriox would have come into work sometime the week of January 2-8, 2022, but after the 3rd, the due date. Ms. Lacriox took the mail home, noticed the item was already past due, but does not know whether the item arrived untimely. Employer took a couple of days to learn that claimant used a middle name (Scott) when he was employed with employer. Ms. Lacriox signed and dated the Notice of Claim on 01/11/2021, but it was to mean 2022 and not 2021. The Notice of Claim was mailed to Iowa Workforce Development (IWD) on 01/11/22, postmarked on 01/11/22 and IWD stamped it

received on 01/12/ 2022 and considers it late on 01/11/ 2022. To be timely, the protest needed to be received on or before 01/03/22.

REASONING AND CONCLUSIONS OF LAW:

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

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

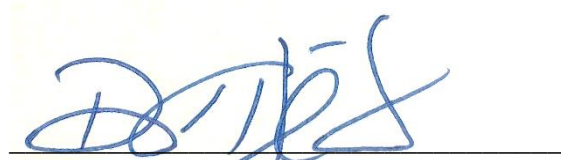
decision to be controlling on this portion of that same Iowa Code section which deals with a time limit in which to file a protest after notification of the filing of the claim has been mailed.

The employer received the Notice of Claim sometime after the mail was checked December 26, 2021-January 1, 2022, and when it was checked sometime January 4-7, 2022. Once employer had learned the Notice had arrived and been received, employer took two days to discover Jacque Laurent was their employee, Scott Laurent. Employer signed and mailed the protest 01/11/22, with a postmark of the same date.

Protest was received as of the postmarked mailing on 01/11/2022 and was untimely. Employer's reasons for the delay are set forth in the above findings of fact section and are a result of its internal office procedures. The reason for employer's delay is not attributable to the agency or the United States Postal Service. Employer's protest is untimely; therefore, the administrative law judge is without jurisdiction to entertain any appeal regarding the separation from employment.

DECISION:

The February 1, 2022 (reference 05) unemployment insurance decision is **AFFIRMED**. Employer's protest is untimely.



Darrin T. Hamilton
Administrative Law Judge

March 30, 2022
Decision Dated and Mailed

dh/mh