

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JONATHAN R GILLILAND
Claimant

DURGA IA LLC
Employer

APPEAL 21A-UI-13053-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/13/20
Claimant: Respondent (2R)

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Employer filed an appeal from the May 20, 2021 (reference 02) unemployment insurance decision that found employer's protest untimely. The parties were properly notified of the hearing. A telephone hearing was held on August 5, 2021, at 2:00 p.m. Claimant did not participate. Employer participated through participated through Amuylya Sharma, Manager. Official notice was taken of the administrative record.

ISSUE:

Whether employer filed a timely protest.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Notice of Claim was mailed to employer at its correct address on December 21, 2020. Employer checks its mail daily and usually receives mail in from Des Moines, Iowa in two days. However, employer did not receive the Notice of Claim until January 6, 2021. The Notice of Claim lists a due date of December 31, 2020. Employer filed its protest on January 8, 2021. Employer's protest was received by Iowa Workforce Development on January 8, 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 that 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.

In this case, employer did not receive the Notice of Claim until after the deadline had passed. Employer did not have an opportunity to protest the Notice of Claim in a timely fashion. Without timely notice of a claim, no meaningful opportunity to respond exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). Employer's protest is considered timely.

DECISION:

The May 20, 2021 (reference 02) 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.



Adrienne C. Williamson
Administrative Law Judge
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August 11, 2021
Decision Dated and Mailed

acw/mh