

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DAVID A NAVRATIL
Claimant

JAMES A SLIGER
Employer

APPEAL 22A-UI-06496-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/30/22
Claimant: Respondent (2)**

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Employer filed an appeal from the February 23, 2022 (reference 01) unemployment insurance decision that found employer's protest untimely. The parties were properly notified of the hearing. A telephone hearing was held on April 22, 2022. Claimant did not participate. Employer participated through James Sliger. Employer's Exhibit 1 was admitted. 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 on February 2, 2022. Employer completed and signed the Statement of Protest on February 14, 2022. The Notice of Claim lists a due date of February 14, 2022. Employer's protest was submitted via fax on February 14, 2022 as evidenced by a successful fax confirmation. (Exhibit 1) Iowa Workforce Development (IWD) received employer's protest on February 15, 2022.

On February 23, 2022, IWD issued a decision (reference 01) finding employer's protest untimely. On March 4, 2022, employer appealed the decision. Also on March 4, 2022, IWD issued a decision (reference 02) amending its February 23, 2022 decision. The March 4, 2022 decision found claimant had earned ten times his weekly benefit amount and, therefore, was eligible for benefits; the decision also determined employer's account should not be charged. The March 4, 2022 decision remains in effect.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes:

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.

Employer submitted its protest to IWD on the due date. Any delay in IWD's receipt of the protest is attributable to agency error. Employer's protest is considered timely.

No remand is necessary due to the March 4, 2022 decision allowing benefits and not charging employer.

DECISION:

The February 23, 2022 (reference 01) unemployment insurance decision is reversed. Employer's protest was timely.



Adrienne C. Williamson
Administrative Law Judge
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Iowa Workforce Development
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April 26, 2022
Decision Dated and Mailed

acw/acw