

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARIA N REVUELTO
Claimant

LATINAS UNIDAS POR UN NUEVO
Employer

APPEAL 17A-UI-11401-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/06/17
Claimant: Respondent (2-R)

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Employer filed an appeal from the October 27, 2017 (reference 04) unemployment insurance decision that found the protest untimely and allowed benefits. After due notice was issued, a hearing was held by telephone conference call on November 28, 2017. The claimant, Maria Revuelto, did not register a telephone number at which to be reached and did not participate in the hearing. The employer, Latinas Unidas Por un Nuevo Amanecer, participated by Melissa Cano Zelaya. Employer's Exhibits 1 through 5 were received and admitted into the record. The administrative law judge took official notice of the administrative record, including the Notice of Claim and protest.

ISSUE:

Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Claimant's notice of claim was mailed to employer's address of record on August 11, 2017. The notice of claim contains a warning that the employer protest response is due ten days from the initial notice date and gave a response deadline of August 21, 2017. The employer did not file a protest response until October 20, 2017, which is after the ten-day period had expired because the employer did not receive the notice of claim in a timely manner. Zelaya explained that the employer's address changed sometime in early 2017. Around that time, the employer had an appeal hearing and had informed the agency of its new address. The employer received multiple forms of correspondence from the agency at its new address in the months following the appeal hearing, and it believed that its address was successfully updated. However, when the notice of claim was sent out related to claimant Maria Revuelto, that document was sent to the employer's former address. The employer received the notice of claim on October 19, and it filed its Statement of Protest on October 20.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether employer's protest is timely. The administrative law judge concludes it is.

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.

The employer did not have an opportunity to protest the notice of claim because the notice was not received in a timely fashion. Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The employer filed the protest within one day of receipt of the notice of claim. Therefore, the protest shall be accepted as timely.

The administrative law judge concludes the employer filed its protest within the time period prescribed by the Iowa Employment Security Law because it did initially reply to the notice of claim, indicating the claimant had not been an employee. Later, when accurate information became available to the employer, it forwarded the available information to the Agency immediately after receipt. This is sufficient evidence of intent to protest any potential charges to its account.

DECISION:

The October 27, 2017 (reference 04) unemployment insurance decision is reversed. The employer filed a timely protest.

REMAND: The separation issue is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn