

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALEXANDER B BASS
Claimant

BLACKHAWK SERVICES CORP
Employer

APPEAL 21A-UI-24132-AR-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/07/21
Claimant: Respondent (2R)

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 26, 2021, (reference 03) unemployment insurance decision that found the protest untimely and allowed benefits. After due notice was issued, a hearing was held on December 21, 2021. The claimant did not participate. The employer participated by Teresa Pinnell. Employer's Exhibit A was admitted. Department's Exhibit D-1 was admitted. The administrative law judge took official notice of the administrative record, including the notice of claim and the statement of protest.

ISSUE:

Was the employer's protest timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant's notice of claim was mailed to employer's address of record on March 15, 2021, and was received by employer within ten days, on March 18, 2021. 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 March 25, 2021. The employer's provided evidence indicates that the employer faxed its protest to Iowa Workforce Development on March 25, 2021. The Notice of Claim was not stamped "received" by Iowa Workforce Development until March 26, 2021.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 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. Iowa Dep't of Job Serv.*, 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 prior to the due date and faxed its protest to Iowa Workforce Development on March 25, 2021. The Notice of Claim received by the employer states, "Protest forms submitted to Iowa Workforce Development must be postmarked or faxed by the due date shown above." The employer has demonstrated that it faxed its protest on the deadline provided to do so. Employer's protest is timely.

DECISION:

The October 26, 2021 (reference 03) 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 fact-finding interview and decision.



Alexis D. Rowe
Administrative Law Judge

January 21, 2022
Decision Dated and Mailed

ar/kmj