

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PATRICIA L KHOUNNASENH
Claimant

THE WORKSOURCE INC
Employer

APPEAL 22A-UI-01473-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/21/21
Claimant: Respondent (2R)**

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

The Worksource Inc, the employer/appellant, filed an appeal from the December 10, 2021, (reference 02) unemployment insurance decision that found the employer's protest was not filed on time and allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on February 8, 2022. The employer participated through Brandy Foreman, unemployment insurance coordinator. Ms. Khounnasenh participated and testified. The administrative law judge took official notice of the administrative record. Employer's Exhibit 1 and Department's Exhibit 1 were admitted as evidence.

ISSUES:

Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Khounnasenh's notice of claim was mailed to employer's correct address on November 24, 2021. The notice of claim contains a warning that the employer's protest response is due ten days from the initial notice date and gave a response deadline of December 6, 2021. In the paragraph above the checkbox for "I am NOT protesting this claim" the notice instructs employers as follows: "[p]rotests forms submitted to Iowa Workforce Development must be postmarked or faxed by the due date shown above."

The employer received the notice. The employer completed the notice and signed it on December 6, 2021. Employer's Exhibit 1. The employer faxed the notice to IWD on December 6, 2021. Employer's Exhibit 1. IWD received the notice on December 7, 2021. Department's Exhibit 1. The agency did not explain how or why it received the employer's fax one day after the employer sent it.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that employer did file its protest on time.

Iowa Code § 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 portion of this 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).

Iowa Admin. Code r. 871-24.35(1) provides:

Date of submission and extension of time for payments and notices.

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 of 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:

Date of submission and extension of time for payments and notices.

(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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

- c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.
- d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

In this case, the employer submitted its protest via fax on December 6, 2021. The administrative law judge concludes the fax was "received" at that time, as faxes are electronically transmitted to the recipient within minutes of being sent. To the extent the fax was not "received" by the Department until one day later, the administrative law judge concludes the delay was due to Department error or misinformation. The employer followed the instructions on the Notice of Claim and should not be penalized for doing so. The employer's protest was filed on time.

DECISION:

The employer's protest of the November 24, 2021 notice of claim was filed on time. The December 10, 2021, (reference 02) unemployment insurance decision is reversed.

REMAND:

The issue of Ms. Khounnasenh's separation from employment with this employer is remanded (sent back) to the Benefits Bureau of Iowa Workforce Development for investigation and a decision.



Daniel Zeno
Administrative Law Judge
Iowa Workforce Development
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

February 28, 2022
Decision Dated and Mailed

dz/mh