

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**BRYAN A CARTER**  
Claimant

**HDS, LTD**  
Employer

**APPEAL 22A-UI-04539-S2-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/12/21**  
**Claimant: Respondent (2R)**

Iowa Code § 96.6(2) - Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the February 4, 2022, (reference 03) unemployment insurance decision that found the protest untimely and allowed benefits. After due notice was issued, a hearing was held on March 23, 2022. The claimant Bryan A. Carter did not participate. The employer HDS, Ltd. participated through managing director Michael Chamberlain. The administrative law judge took official notice of the administrative record, including the notice of claim and the statement of protest.

**ISSUES:**

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 December 17, 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 December 27, 2021. Employer filed its protest on December 29, 2021.

Mr. Chamberlain is responsible for checking employer's mail. He checked the mail in the days leading up to December 29, 2021, but nothing from Iowa Workforce Development (IWD) was received until December 29. He received another piece of mail from IWD on that same date. Mr. Chamberlain promptly filed an appeal of the notice of claim the same day. He attributed the delay in the mail due to the post office's busy holiday season.

The claimant's separation from employment has not yet been the subject of a Benefits Bureau fact-finding interview.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer has filed its protest response within the time period prescribed by the Iowa Employment Security Law.

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.

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.

The law provides that all interested parties shall be promptly notified about an individual filing a claim. The parties have ten days from the date of mailing the notice of claim to protest payment of benefits to the claimant. Iowa Code § 96.6(2). 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 reasoning and holding of the Beardslee court is considered controlling on the portion of Iowa Code section 96.6(2) that deals with the time limit to file a protest after the notice of claim has been mailed to the employer.

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 ten days of receipt of the notice of claim. Therefore, the protest shall be accepted as timely.

**DECISION:**

The February 4, 2022, (reference 03) 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.



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March 31, 2022

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Decision Dated and Mailed

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