

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**TANNER L WILLIAMS**  
Claimant

**KLINGER PAINT CO INC**  
Employer

**APPEAL NO. 20A-UI-01807-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/10/19**  
**Claimant: Respondent (1)**

Iowa Code Section 96.6-2 - Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer filed an appeal on February 27, 2020 from the quarterly Statement of Charges that was mailed to the employer on February 7, 2020 and that included a charge for benefits paid to the claimant during the calendar quarter that ended December 31, 2019. The Appeals Bureau treated the appeal from the Statement of Charges as also a protest in response to the Notice of Claim that was mailed to the employer on November 13, 2019. After due notice was issued, a hearing was held by telephone conference call on March 16, 2020. Tamra Williams represented the claimant, Tanner Williams. Mr. Williams is currently incarcerated in a federal correctional facility and has executive power of attorney delegating representative authority to Ms. Williams. Brian Klinger represented the employer. Exhibits 1 and 2 and Department Exhibits D-1, D-2 and D-3 were received into evidence. The administrative law judge took official notice of the following Agency administrative record: DBRO.

**ISSUE:**

Whether the employer's protest of the claim for benefits was timely.  
Whether there is good cause to deem the employer's late protest as timely.

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: On November 13, 2019, Iowa Workforce Development mailed a notice of claim to the employer at the employer's last-known address of record. The notice of claim concerned claimant Tanner Williams. The employer's address of record was a United States Postal Service post office box that the employer ceased using some years ago. The employer had not updated its address of record with Iowa Workforce Development, but had taken steps to have the United States Postal Service forward mail from the post office box to the employer's physical plant on Willow Creek Drive S.W. in Cedar Rapids. The Postal Service forwarded the correspondence in a timely manner and the employer received the notice of claim in a timely manner, prior to the protest deadline. The notice of claim contained a warning that any protest must be postmarked, faxed or returned by the due date set forth on the notice, which was November 25, 2019. Brian Klinger, Vice President, completed the employer's protest information on the notice of claim form. While Mr. Klinger believed he had faxed the protest/notice of claim form to Iowa

Workforce Development on November 23, 2019, Iowa Workforce Development received no protest from the employer prior to the February 27, 2020 online appeal from the quarterly Statement of Charges. The employer advises it has the original notice of claim form the employer completed in November 2019 and has a fax log showing the November 23, 2019 transmission of the protest/notice of claim. However, he has not produced the notice of claim form Mr. Klinger filled out. The employer has not produced a fax confirmation log showing transmission of protest by the November 25, 2019 protest deadline. Instead, the employer produced a fax log for September and October 2019, a period that predates the November 13, 2019 notice of claim by a number of weeks. After the initial steps the employer took in November 2019 in response to the notice of claim, the employer did not follow up on the matter until the employer received the quarterly Statement of Charges that was mailed to the employer on February 7, 2020. The employer thereafter filed the February 27, 2020 online appeal from the quarterly statement of charges.

After the claimant separated from this employer during the second quarter of 2019, and before the claimant established the original claim for benefits that was effective November 10, 2019, the claimant worked in other insured employment for which he was paid wages totaling more than 10 times his weekly \$224.00 benefit amount.

Klinger Paint Company, Inc. is a base period employer for purposes of the original claim that was effective November 10, 2019. The claimant's base period wages from the Klinger Paint employment totaled \$6,535.00 (rounded to the nearest full dollar amount). The notice of claim that was mailed to the employer on November 13, 2019, referenced a maximum employer liability of \$2,178.78, one-third of the total base period wages. The quarter statement of charges that was mailed to the employer on February 7, 2020 included a \$299.45 charge to the employer's account for benefits paid to the claimant during the fourth quarter of 2019. Iowa Workforce Development had in fact paid \$1,120.00 in wages to the claimant for the period of November 10, 2019 through December 21, 2019.

## **REASONING AND CONCLUSIONS OF LAW:**

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.

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 administrative law judge considers the reasoning and holding of the court 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.

Iowa Administrative Code Rule 871-24.8(2)(a) and (b) provide as follows:

- (2) Responding by employing units to a notice of the filing of an initial claim or a request for wage and separation information and protesting the payment of benefits.

a. The employing unit which receives a Form 65-5317, Notice of Claim, or a Form 68-0221, Request for Wage and Separation Information, must, within ten days of the date of the notice or request, submit to the department wage or separation information that affects the individual's rights to benefits, including any facts which disclose that the individual separated from employment voluntarily and without good cause attributable to the employer or was discharged for misconduct in connection with employment.

b. The employing unit may protest the payment of benefits if the protest is postmarked within ten days of the date of the notice of the filing of an initial claim. In the event that the tenth day falls on a Saturday, Sunday or holiday, the protest period is extended to the next working day of the department. If the employing unit has filed a timely report of facts that might adversely affect the individual's benefit rights, the report shall be considered as a protest to the payment of benefits.

Iowa Administrative Code Rule 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 those outlined in paragraphs 24.35(1)"a" and "b", on the date it is received by the division.

Iowa Administrative Code Rule 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.

Iowa Code section 96.7(2)(a)(6) provides:

2. Contribution rates based on benefit experience.

a. (6) Within forty days after the close of each calendar quarter, the department shall notify each employer of the amount of benefits charged to the employer's account during that quarter. The notification shall show the name of each individual to whom benefits were paid, the individual's social security number, and the amount of benefits paid to the individual. An employer which has not been notified as provided in section 96.6, subsection 2, of the allowance of benefits to an individual, may within thirty days after the date of mailing of the notification appeal to the department for a hearing to determine the eligibility of the individual to receive benefits. The appeal shall be referred to an administrative law judge for hearing and the employer and the individual shall receive notice of the time and place of the hearing.

The evidence in the record establishes an untimely protest. Despite the employer's failure to update its address of record with Iowa Workforce Development for several years, the employer received the notice of claim in a timely manner, prior to the November 25, 2019 protest deadline. The employer had a reasonable opportunity to file a protest by the November 25, 2019 deadline. When a protest is received, the rules require that Workforce Development mail to the parties notice of a fact finding interview, that such a fact-finding be held, and then that a decision be made regarding the protest. Iowa Admin. Code r. 871 - 24.9. Regular proceeding by the agency would have meant that the protest would be retained, a protest would be docketed, a fact finding interview would be scheduled and held, and a decision would be issued. None of this occurred before the employer's protest was received by email on February 27, 2020. Had a protest been received by the November 25, 2019 deadline, the regular process should have been triggered, but it was not. "The proceedings of all officers and courts of limited and inferior jurisdiction within the state shall be presumed regular". Iowa Code §622.56; accord *City Of Janesville v. McCartney*, 426 N.W.2d 785 (Iowa 1982). Thus, there is a presumption, from Workforce Development having no record of a protest prior to February 27, 2020, that no protest was received by Workforce Development. This is not an absolute presumption, but is instead a presumption that may be overcome with sufficiently probative evidence. The employer simply did not supply evidence sufficient to overcome the presumption. The employer witness testified that the protest was sent by fax on November 23, 2019. The employer provided a fax transmission log for September and October 2019, but not for the relevant period in November 2019. The employer indicated he had the original notice of claim he prepared in November 2019, but has not produced that. The employer is not helped by the fact that after it supposedly sent in the fax on November 23, 2019, it did nothing for more than two months. Had a protest been sent, one might expect a call from Workforce Development before two months had gone by. The notice of claim says as much. (See Ex. D-1). The evidence establishes that the employer's failure to file a timely protest was not attributable to Workforce Development or to the United States Postal Service. Accordingly, the administrative law judge lacks jurisdiction to disturb the Agency's initial determination regarding the nature of the claimant's separation from the employment, the claimant's eligibility for benefits, or the employer's liability for benefits.

The Agency's initial determination of the claimant's eligibility for benefits and the employer's liability for benefits shall remain in effect.

Because the statement of charges was not the employer's first notice of the claim for benefits, the administrative law judge need not further consider the employer's appeal from the quarterly statement of charges. See Iowa Code section 96.7(2)(a)(6)

**DECISION:**

The employer's protest from the November 13, 2019 notice of claim was untimely. The claimant is eligible for benefits provided he meets all other eligibility requirements. The employer's account may be charged for benefits. Because the statement of charges was not the employer's first notice of the claim for benefits, the administrative law judge need not further consider the employer's appeal from the quarterly statement of charges.



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James E. Timberland  
Administrative Law Judge

March 27, 2020  
Decision Dated and Mailed

jet/scn