

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CRAIG JACOBS
Claimant

COPELAND TRUCKING INC
Employer

APPEAL 19A-UI-08562-AD-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 09/22/19
Claimant: Respondent (1)

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Copeland Trucking, Employer, filed a timely appeal from the October 21, 2019 (reference 01) unemployment insurance decision that found employer's protest untimely.

After due notice was issued, a hearing was held by telephone conference on November 21, 2019 at 1 p.m. Claimant did not register for the hearing and did not participate. Employer participated through HR Director Kevin Horvath. Safety Director Lorie Jordan was also present for the hearing.

Department's Exhibit D1, Notice of Claim; Departments Exhibit D2, Communications Result Report; and Employer's Exhibit 1, Protest Letter were admitted into evidence.

ISSUE:

Did the employer file a timely protest?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds:

The Notice of Claim was mailed to Employer on September 30, 2019. Exhibit D1. That was employer's correct business address on that date. Mr. Horvath received the Notice of Claim somewhere between October 3rd and 5th. Mr. Horvath completed and signed the Employer Statement of Protest and an accompanying letter on October 10, 2019. Exhibits D1 and 1. The Notice of Claim lists a due date of October 10, 2019. Exhibit D1.

Mr. Horvath attempted to send the Statement of Protest via fax in the late afternoon of October 10, 2019, the date it was due. He encountered difficulty with completing the fax transmission. He attempted to fax the Statement of Protest to each of the three fax numbers listed on the document accompanying the statement of protest. Exhibit D1. However, none of the attempts were successful.

Mr. Horvath subsequently learned the employer's fax services were not working at that time. After learning the employer's fax services were not working, Mr. Horvath did not attempt to transmit the Statement of Protest in some other way; for example, by faxing from a different location or by mailing it. Notably, the protest would have been timely if it had been postmarked on that date. Exhibit D1.

Employer's protest was submitted by fax and received by Iowa Workforce Development on October 11, 2019 at 12:11 p.m. Exhibit D2.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge AFFIRMS the October 21, 2019 (reference 01) unemployment insurance decision that found employer's protest untimely.

Iowa Code § 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)(a) 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)

(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. IDJS*, 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.

While the administrative law judge is sympathetic to the unforeseen technical difficulties employer experienced at the time it attempted to submit the Statement of Protest, that does not explain why employer waited until late in the afternoon on the date it was due to attempt to complete and submit it, particularly when it had been in employer's possession for several days. Furthermore, it is clear that the delay in submission was not due to division error or misinformation or to delay or other action of the United States postal service.

Because employer's protest is untimely, the administrative law judge is without jurisdiction to entertain any appeal regarding the separation from employment.

DECISION:

The October 21, 2019 (reference 01) unemployment insurance decision that found employer's protest untimely is AFFIRMED. Claimant is eligible for benefits, so long as he is otherwise eligible.

Andrew B. Duffelmeyer
Administrative Law Judge

Decision Dated and Mailed

abd/scn