

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

DANIEL R HERBER
Claimant

APPEAL NO. 19A-UI-02569-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRAD DEERY MOTORS
Employer

OC: 12/16/18
Claimant: Respondent (2)

Iowa Code Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 18, 2019, reference 03, decision that allowed benefits to the claimant provided he was otherwise eligible, that held the employer's account could be charged for benefits, and that held the employer's protest could not be considered because it was untimely. After due notice was issued, a hearing was held by telephone conference call on April 11, 2019. Claimant Daniel Herber did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. Megan Milligan of Employers Unity represented the employer and presented testimony through Kellie Langdon. Exhibits 1 through 5 and Department Exhibits D-1, D-2 and D-3 were received into evidence. The administrative law judge took official notice of the three-page employer fax, dated March 13, 2019, contained in the Agency's administrative file.

ISSUE:

Whether the employer's protest of the claim for benefits was timely.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: On December 17, 2018, Iowa Workforce Development electronically transmitted a notice of claim concerning the above claimant to the employer's representative via the SIDES system. Employers Unity is the employer's representative of record. The employer has elected to receive notice of claims through the SIDES system. The notice of claim indicated that the employer's protest of the claim was due by December 29, 2018. On December 28, 2018, Employers Unity transmitted a protest of the claim via the SIDES system. Iowa Workforce Development received the protest that same day.

After the claimant separated from Brad Deery Motors during the first quarter of 2018, and before he established the original claim for benefits that was effective December 16, 2018, he had additional employment for which he was paid wages that well exceeded 10 times his weekly benefit amount.

REASONING AND CONCLUSIONS OF LAW:

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 those outlined in paragraphs 24.35(1)"a" and "b", 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.

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.

The evidence in the record establishes that the employer's protest was timely. The protest was due on December 29, 2018 and was filed on December 28, 2018. In light of the fact that the claimant earned 10 times his weekly benefit amount subsequent to the separation from this employer and prior to establishing his claim for benefits, the claimant is eligible for benefits provided he meets all other eligibility requirements and the employer's account shall not be charged.

DECISION:

The March 18, 2019, reference 03, decision is reversed. The employer's protest was timely. The claimant is eligible for benefits, provided he meets all other eligibility requirements. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs