

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DUSTIN J ANDERSON
Claimant

APPEAL 20A-UI-02553-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PORTER MOVING COMPANY LLC
Employer

**OC: 02/02/20
Claimant: Respondent (2R)**

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

On March 24, 2020, the employer filed an appeal from the March 19, 2020, (reference 01) unemployment insurance decision that found its protest could not be accepted because it was not timely. The parties were properly notified about the hearing. A telephone hearing was scheduled for April 17, 2020. The evidence in the appeal letter and administrative record contained sufficient evidence to make a decision. Therefore, no testimony was necessary and no hearing was held.

ISSUE:

Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The claimant's notice of claim was mailed to employer's address of record on March 3, 2020, but was not received by employer within ten days. 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 March 13, 2020. The claimant's separation from employment has not yet been the subject of a Benefits Bureau fact-finding interview. The employer received the notice on March 16, 2020 and submitted its protest that same day. The employer subsequently contacted the U.S. Postal Office, who acknowledged responsibility for the mailing delay.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that employer has filed a timely protest response as 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.

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). In this case, the employer did not receive the notice of claim until March 16, 2020, three days after the due date. The employer's appeal indicates it contacted to U.S. Post Office, who acknowledged it was responsible for the delay. The employer did not have an opportunity to protest the notice of claim because, for some unknown reason, the notice was not received in a timely fashion. Without timely notice of a claim, no meaningful opportunity to respond exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The employer filed the protest within one day of receipt of the notice of claim. Therefore, the protest shall be accepted as timely.

DECISION:

The March 19, 2020, (reference 01) unemployment insurance decision is reversed. The employer has 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.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/scn