

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAROD W JOHNSON
Claimant

R.S. ENTERPRISES & INVESTMENTS L
Employer

APPEAL 18A-UI-02823-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/14/18
Claimant: Respondent (1)**

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Employer filed an appeal from the February 23, 2018, (reference 04) decision that found the protest untimely and allowed benefits. After due notice was issued, a hearing was held by telephone conference call on March 28, 2018. Claimant did not register for the hearing and did not participate. The employer participated by owner Rod Brandhorst. Official notice was taken of the administrative record, including the notice of claim, the employer's protest, and the fact-finding documents, with no objection.

ISSUE:

Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Claimant's notice of claim was mailed to employer's address of record on January 17, 2018, and was received at the employer's address of record. The employer uses its accountant's office address as the employer's address of record. Normally, the employer's accountant's office would forward to the employer immediately any notice of claims for the employer. However, when the receptionist at the accountant's office opened claimant's notice of claim, the receptionist did not realize what the notice of claim was for and put the notice of claim in the employer's corporate file. The employer's accountant's office did not immediately forward the notice of claim to the employer. The employer did not physically receive the notice of claim until February 16, 2018 (approximately two or three weeks after the employer's accountant's office received the notice of claim). The notice of claim contained a warning that the employer protest response is due ten days from the initial notice date and gave a response deadline of January 29, 2018. The employer did not file a protest response until February 20, 2018, which is after the ten-day period. The employer still uses its accountant's office address as the employer's address of record.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that employer has failed to protest response within the time period prescribed by the Iowa Employment Security 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 an unemployment insurance decision states that such an appeal must be filed within ten days after notification 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 setting 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. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979). The administrative law judge considers the reasoning and holding of that 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.

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.

Although the employer did not have physical control over the notice of claim until February 16, 2018, which was after the protest deadline, its accountant's office had control over the notice for approximately two or three weeks before February 16, 2018. The employer's choice to have its mail delivered and processed by its accountant's office was a business decision. Even though the employer uses a third party to process its mail, it is still the employer's responsibility to ensure the third party promptly processes the employer's notice of claims.

The employer has failed to establish that the notice of claim was not delivered to the employer's address of record before the protest deadline. The employer has not shown any good cause for failure to comply with the jurisdictional time limit or that the delay was due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). Therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the claimant's separation from employment or authority to remand for a fact-finding interview. Iowa Code § 96.6(2).

DECISION:

The February 23, 2018, (reference 04) unemployment insurance decision is affirmed. Employer has failed to file a timely protest response, and the unemployment insurance decision shall stand and remain in full force and effect.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs