

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ERIN D CANFIELD

Claimant

APPEAL 18A-UI-10025-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTER GROVE ORCHARD INC

Employer

OC: 09/09/18

Claimant: Respondent (1)

Iowa Code § 96.6(2) – Timeliness of Protest
Iowa Admin Code r. 871-24.35 – Date of Submission

STATEMENT OF THE CASE:

Center Grove Orchard, Inc., Employer, filed an appeal from the September 27, 2018, (reference 02) unemployment insurance decision that found the protest untimely and determined the claimant, Erin Canfield, was eligible for unemployment insurance benefits. The parties were properly notified of the hearing. A telephone hearing was held on October 17, 2018 at 3:00 p.m. Claimant participated. Employer participated through Karen Mahoney, Office Manager and Human Resources Director. Department's Exhibits D-1 and D-2 were admitted.

ISSUE:

Whether the employer filed a timely protest.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The Notice of Claim was mailed to Center Grove Orchard, Inc. at the correct address on September 11, 2018. (Exhibit D-1; Mahoney Testimony) Employer does not know the date it received the notice. (Mahoney Testimony) Employer completed and signed the protest on September 20, 2018. (Exhibit D-1; Mahoney Testimony) The Notice of Claim lists a due date of September 21, 2018. (Exhibit D-1) Employer mailed the protest on September 22, 2018, as evidenced by the postmark. (Exhibit D-2; Mahoney Testimony) The protest was received by Iowa Workforce Development on September 24, 2018. (Exhibit D-1)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the employer's protest was untimely

Iowa Code section 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) 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.

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.

Employer received the notice of claim before the due date but did not mail its protest until two days after the due date. The delay in submitting the protest was not attributable to the agency or the United States Postal Service. Employer's protest is untimely.

DECISION:

The September 27, 2018 (reference 02) unemployment insurance decision is affirmed. The employer filed an untimely protest.

Adrienne C. Williamson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
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Des Moines, IA 50319-0209
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Decision Dated and Mailed

acw/rvs