

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**FRANCISCO ALCANTAR**  
Claimant

**APPEAL NO. 20A-UI-04118-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**K & S LLC  
NELSON CONSTRUCTION &  
DEVELOPMENT**  
Employer

**OC: 12/22/19  
Claimant: Respondent (1)**

Iowa Code Section 96.6-2 - Timeliness of Protest  
Iowa Code Section 96.7(2)(a)(6) – Appeal from Statement of Charges

**STATEMENT OF THE CASE:**

The employer filed an appeal from the quarterly statement of charges that was mailed to the employer on May 8, 2020 and that included a \$5,551.00 charge for benefits paid to Francisco Alcantar during the first quarter of 2020. After due notice was issued, a telephone hearing was held on June 2, 2020. Mr. Alcantar participated. Kim Hoffman, Finance Officer, represented the employer. Spanish-English interpreter Bruno Robles of CTS Language Link assisted with the hearing. Exhibit 1 and Department Exhibits D-1, D-2 and D-3 were received into evidence. The administrative law judge took official notice of the wages paid to the claimant subsequent to his separation from this employer and prior to the December 22, 2019 original claim for benefits.

**ISSUE:**

Whether the employer's protest of the claim for benefits was timely.  
Whether the employer's appeal from the statement of charges was timely.

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: On October 7, 2019, the employer enrolled in the SIDES program and designated the email address to which notice of postings to the employer's SIDES account should be directed. Danielle Lee Davidson, Accountant, is the person who set up the employer's SIDES account in October 2019 and the person who provided the email address to which notice of SIDES postings should be directed. Ms. Lee Davidson provided her work email address as the address to which notice of SIDES postings should be directed. Ms. Lee Davidson reported to Steve Nelson. Ms. Lee Davidson separated from K & S, L.L.C. on December 18, 2019.

Kim Hoffman, Finance Officer, joined K & S, L.L.C. in January 2020 and was unaware during the first three months of her employment that the employer had a SIDES account.

On the evening of December 23, 2019, Iowa Workforce Development posted a notice of claim to the employer's SIDES account concerning claimant Francisco Alcantar. The posting included a

January 3, 2020 deadline for the employer's response. At 1:00 a.m. on December 24, 2019, the SIDES system emailed notice of the SIDES posting to the email address designated by the employer. The email message also provided the January 3, 2020 deadline for the employer's response. The employer did not file a protest by the January 3, 2020 protest deadline or at any point prior to May 12, 2020.

Ms. Hoffman became aware of the SIDES account on April 16, 2020, when she received mailed correspondence from Iowa Workforce Development. In response to that correspondence, Ms. Hoffman contacted Iowa Workforce Development, gained access to the SIDES account, and had Iowa Workforce Development substitute her email address as the email address to which notice of SIDES postings should be directed. Ms. Hoffman did not think to inquire about whether there had been postings to the SIDES account between the time Ms. Lee Davidson left the company on December 18, 2019 and Ms. Hoffman's contact with Iowa Workforce Development in April 2020.

On May 8, 2020, Iowa Workforce Development mailed a quarterly statement of charges that included a \$5,551.00 charge to the employer's account for benefits paid Mr. Alcantar for benefits paid to Mr. Alcantar during the first quarter of 2020. The statement of charges also included charges for two more claimants. On May 12, 2020, the employer emailed an appeal from the quarterly statement of charges to the Appeals Bureau. The Appeals Bureau received the appeal on May 12, 2020.

#### **REASONING AND CONCLUSIONS OF 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 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 that deals with a time limit in which to file a protest after notification of the filing of the claim has been mailed.

Iowa Administrative Code Rule 871-24.8(2)(a) and (b) provide as follows:

- (2) Responding by employing units to a notice of the filing of an initial claim or a request for wage and separation information and protesting the payment of benefits.
  - a. The employing unit which receives a Form 65-5317, Notice of Claim, or a Form 68-0221, Request for Wage and Separation Information, must, within ten days of the date of the notice or request, submit to the department wage or separation information that affects the individual's rights to benefits, including any facts which disclose that the individual separated from employment voluntarily and without good cause attributable to the employer or was discharged for misconduct in connection with employment.

b. The employing unit may protest the payment of benefits if the protest is postmarked within ten days of the date of the notice of the filing of an initial claim. In the event that the tenth day falls on a Saturday, Sunday or holiday, the protest period is extended to the next working day of the department. If the employing unit has filed a timely report of facts that might adversely affect the individual's benefit rights, the report shall be considered as a protest to the payment of benefits.

Iowa Administrative Code Rule 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 Administrative Code Rule 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 96.7(2)(a)(6) provides:

2. Contribution rates based on benefit experience.

a. (6) Within forty days after the close of each calendar quarter, the department shall notify each employer of the amount of benefits charged to the employer's account during that quarter. The notification shall show the name of each individual to whom benefits were paid, the individual's social security number, and the amount of benefits paid to the individual. An employer which has not been notified as provided in section 96.6, subsection 2, of the allowance of benefits to an individual, may within thirty days after the date of mailing of the notification appeal to the department for a hearing to determine the eligibility of the individual to receive benefits. The appeal shall be referred to an administrative law judge for hearing and the employer and the individual shall receive notice of the time and place of the hearing.

The weight of the evidence in the record establishes an untimely protest. Pursuant to the employer's election to receive and respond to notice of claims via the SIDES system, Iowa Workforce Development posted the notice of claim to the employer's SIDES account on December 23, 2019 and sent the appropriate email notice on December 24, 2019 to the email address designated by the employer. The employer had not taken reasonable and appropriate steps to change the email address to which notices of SIDES postings should be directed. The employer did not take reasonable and appropriate steps to assert control of Ms. Lee Davidson's work email address and did not otherwise review correspondence directed to that email address. For that reason, the employer did not review the SIDES posting or submit a protest by the January 3, 2020 protest deadline. The protest was not filed until May 12, 2020, more than four months after the protest deadline. The late filing of the protest was attributable to the employer's internal operations and not attributable to Iowa Workforce Development or to the United States Postal Service. For that reason, there is not good cause under the law to treat the late protest as a timely protest. Because the protest was untimely, the administrative law judge lacks jurisdiction to disturb the Agency's initial determination regarding the nature of the claimant's separation from the employment, the claimant's eligibility for benefits, or the employer's liability for benefits. The Agency's initial determination of the claimant's eligibility for benefits and the employer's liability for benefits shall remain in effect.

Because Iowa Workforce had indeed provided notice of the claim as required by Iowa Code section 96.6(2) and pursuant to the employer's election to receive electronic notice of claims, the quarterly statement of charges was not the first notice concerning Mr. Alcantar's claim for benefits. For this reason, the administrative law need not further consider the appeal from the statement of charges. The statement of charges that was mailed to the employer on May 8, 2020 and that included a charge for benefits paid to the claimant during the first quarter of 2020 remains in effect.

**DECISION:**

The employer's protest was untimely. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits. The statement of charges that was mailed to the employer on May 8, 2020 and that included a charge for benefits paid to the claimant during the first quarter of 2020 remains in effect.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in dark ink on a light gray rectangular background.

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James E. Timberland  
Administrative Law Judge

July 2, 2020  
Decision Dated and Mailed

jet/sam