

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MALINDA K SMITH**  
Claimant

**PORTILLO'S HOT DOGS, LLC**  
Employer

**APPEAL 22A-UI-04275-AR-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/20/21  
Claimant: Respondent (2R)**

Iowa Code § 96.6(2) – Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the February 1, 2022, (reference 02) unemployment insurance decision that found the protest untimely and allowed benefits. After due notice was issued, a hearing was held on March 18, 2022. The claimant, Malinda K. Smith, did not participate. The employer, Portillo's Hot Dogs, LLC, participated by Leslie Ruttenberg. Employer's Exhibits A and B were admitted. The administrative law judge took official notice of the administrative record, including the notice of claim and the statement of protest.

**ISSUE:**

Was the employer's protest timely?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant's notice of claim was mailed to employer's address of record on June 28, 2021, and was received by employer within ten days, on July 1, 2021. 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 July 8, 2021. The employer faxed the completed protest to Iowa Workforce Development on July 8, 2021, at 3:24 p.m. The protest was not marked as received by Iowa Workforce Development until July 9, 2021.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the employer's protest is timely.

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. 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:

(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 by any means other than the United States postal service on the date it is received by the division.

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.

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.

The employer presented evidence that it submitted its protest via fax on July 8, 2021, which was the deadline by which it could do so timely. It was not marked as received by Iowa Workforce Development until the following day, July 9, 2021. The notice of claim states, "Protest forms submitted to Iowa Workforce Development must be postmarked or faxed by the due date shown above." Accordingly, any delay in acknowledgement of receipt was due to the Agency. The employer's protest is timely filed.

**DECISION:**

The February 1, 2022, (reference 02) unemployment insurance decision is reversed. The employer 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.



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Alexis D. Rowe  
Administrative Law Judge

March 31, 2022  
Decision Dated and Mailed

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