

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARK E BALLARD
Claimant

AXIOM GRAYS LAKE LLC
Employer

APPEAL 20A-UI-01569-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 01/19/20
Claimant: Respondent (2R)

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Employer filed an appeal from the February 17, 2020 (reference 01) unemployment insurance decision that found employer's protest untimely. The parties were properly notified of the hearing. A telephone hearing was held on March 9, 2020, at 11:00 a.m. Claimant did not participate. Employer participated through Barb Ditzenberger, Vice President of Human Resources. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUE:

Whether employer filed a timely protest.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Notice of Claim was mailed to 100 Tri State Intern, Lincolnshire, Illinois on January 27, 2020. That was not employer's correct business address. Employer's address is 100 Tri State International Drive, Suite #200, Lincolnshire, Illinois. Employer's address creates a maximum character issue with Iowa Workforce Development's system. Employer received the Notice of Claim on February 13, 2020. Employer completed and signed the Employer Statement of Protest on February 13, 2020. The Notice of Claim lists a due date of February 6, 2020. Employer submitted its protest via facsimile on February 13, 2020. Employer's protest was received by Iowa Workforce Development on February 13, 2020. The claimant's separation from employment has not yet been the subject of a Benefits Bureau fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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)(c) 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:
 - (c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], 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.

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 Iowa Supreme 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.

In this case, employer did not receive the Notice of Claim until after the due date had passed and, therefore, did not have an opportunity to timely protest the Notice of Claim. The delay was due to IWD's maximum character issue. Employer completed its protest and submitted it to IWD on the same day it received the Notice of Claim. Employer's protest is timely.

DECISION:

The February 17, 2020 (reference 01) unemployment insurance decision is reversed. Employer's protest was timely.

REMAND:

The separation issue is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision.

Adrienne C. Williamson
Administrative Law Judge
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Iowa Workforce Development
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Decision Dated and Mailed

acw/scn