

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JEREMIAH J JOHNSON
Claimant

SENIOR HOUSING HEALTH CARE INC
Employer

APPEAL 24A-UI-04159-PT-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/24/24
Claimant: Respondent (2R)

Iowa Code § 96.6(2) – Timeliness of Protest
Iowa Code Chapter 95 – Requalification

STATEMENT OF THE CASE:

The employer, Senior Housing Health Care Inc., filed a timely appeal from the April 17, 2024, (reference 05) unemployment insurance decision that found the employer's protest untimely and allowed the claimant, Jeremiah Johnson, to receive benefits. After due notice, a telephone hearing was held on May 13, 2024. The employer participated through Human Resources Manager Jane Robertson. The claimant did not participate. The administrative law judge took official notice of the administrative record including the notice of claim and protest.

ISSUE:

Whether the employer's protest is timely.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record finds: The claimant filed an original claim for unemployment insurance benefits effective March 24, 2024. In response, a notice of claim was mailed to the employer's address of record on April 2, 2024. However, the address of record is incorrect in the Iowa Workforce Development (IWD) system. It is not clear why the address is incorrect. The employer's third-party administrator is encouraged to continue to follow up with the IWD Tax Bureau to correct the address of record.

The notice of claim contains a warning that the employer's response is due ten days from the initial notice date and gave a response deadline of Friday, April 12, 2024. The employer did not receive the notice of claim until Monday, April 15, 2024. The statement of protest was completed and returned to IWD that same day, April 15, 2024.

The administrative record indicates that since the claimant's separation from this employment in April 2023, the claimant has earned at least ten times his weekly benefit amount in insured wages, or at least \$3,310.00 in insured wages, prior to the effective date of the claim year.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer filed a timely protest.

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.

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.

(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 [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.

The law provides that all interested parties shall be promptly notified about an individual filing a claim. The parties have ten days from the date of mailing the notice of claim to protest payment of benefits to the claimant. Iowa Code § 96.6(2). 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 that court to be controlling on this portion of that same Iowa Code section, which deals with a time limit in which to file a protest.

The administrative law judge concludes that any delay in the return of the notice of claim and statement protest is due to error on the part of the Agency or delay by the United States Postal

Service. The employer received the notice of claim after the deadline to submit a response. Promptly after receiving the notice of claim, the employer completed and returned the statement of protest. The employer's protest shall be accepted as timely.

This matter will be remanded to determine whether the claimant has requalified for benefits and whether the employer may be relieved of charges.

DECISION:

The April 17, 2024, (reference 05) unemployment insurance decision is reversed. The employer has established a good-cause reason for its late protest in response to the notice of claim. The protest shall be deemed timely.

REMAND:

This matter is remanded to the Benefits Bureau to review the claimant's wage records since separating from the employer for the purpose of determining whether the claimant has requalified for benefits by earning ten times his weekly benefit amount in insured wages and whether the employer may be relieved of charges.



Patrick B. Thomas
Administrative Law Judge

May 21, 2024
Decision Dated and Mailed

pbt/scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.