

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CASEY L NOTT
Claimant

PORTER MOVING COMPANY LLC
Employer

APPEAL 18A-UI-08863-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/24/17
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer filed an appeal from the February 1, 2018, (reference 05) unemployment insurance decision that allowed benefits based upon an untimely protest. The parties were properly notified about the hearing. A telephone hearing was held on September 11, 2018. Claimant did not register for the hearing and did not participate. Employer participated through operations manager John Davis. Department's Exhibit D-1 was received. The administrative law judge took official notice of the administrative record, including the Notice of Claim and protest.

ISSUES:

Is the appeal timely?
Was the appeal from the Statement of Charges timely?
Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The unemployment insurance decision was mailed to the employer's address of record on February 1, 2018. The employer did not receive the decision. The first notice of claimant's claim for unemployment insurance benefits was the Statement of Charges that was mailed to employer on August 9, 2018. Employer filed an appeal on August 22, 2018.

Claimant's Notice of Claim was mailed to employer's address of record on December 24, 2017, and was received at employer's post office box within ten days. The Notice of Claim contains a warning that any protest must be postmarked, faxed or returned not later than ten days from the initial mailing date. The employer did not file a protest until January 23, 2018, which is after the ten-day period had expired because employer was in the process of moving between two offices and the mail was not internally delivered to the correct office and person, John Davis, until after the protest was due.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is.

Iowa Code § 96.6(2) provides, in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

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 appellant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a qualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The employer timely appealed the August 9, 2018, Statement of Charges, which was the first notice of qualification. Therefore, the appeal shall be accepted as timely.

The administrative law judge further concludes that employer has failed to protest within the time period prescribed by the Iowa Employment Security 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.

In this case, employer failed to timely file a protest to the Notice of Claim because internal issues with delivering the mail to the proper office and person during an office move. The Notice of Claim was timely received in employer's post office box. The delay in responding to the Notice of Claim was due to issues the employer was having internally and was not due to

any *Agency error or misinformation or delay or other action of the United States Postal Service* pursuant to Iowa Admin. Code r. 871-4.35(2). No other good cause reason has been established for the delay. The administrative law judge further concludes that the employer has failed to timely protest pursuant to Iowa Code § 96.6(2), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the claimant's termination of employment. See, *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979); *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979) and *Pepsi-Cola Bottling Co. v. Emp't Appeal Bd.*, 465 N.W.2d 674 (Iowa Ct. App. 1990).

DECISION:

The February 1, 2018, (reference 05) decision is affirmed. The appeal is considered timely. However, employer has failed to file a timely protest, and the decision of the representative shall stand and remain in full force and effect.

Christine A. Louis
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Decision Dated and Mailed

cal/scn