

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMY M MILLER
Claimant

APPEAL 22A-UI-00302-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DIVERSIFIED SERVICES FOR INDUSTRY
Employer

**OC: 10/24/21
Claimant: Respondent (4)**

Iowa Code § 96.6(2) – Timeliness of Protest
Iowa Code Chapter 96 – Requalification

STATEMENT OF THE CASE:

On November 23, 2021, Diversified Services for Industries (employer) filed an appeal from the November 16, 2021, reference 02, unemployment insurance decision that found the protest untimely and allowed Amy M. Miller (claimant) to receive benefits. After due notice was issued, a hearing was scheduled to be held by telephone conference call on January 24, 2022. However, no hearing was held as there was sufficient evidence in the appeal letter and administrative record to resolve the matter without testimony.

ISSUES:

Is the employer's protest timely?
Has the claimant requalified for benefits since the separation from this employer?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The claimant separated from employment on December 30, 2020, and she filed a claim for benefits effective October 24, 2021. The claimant's weekly benefit amount is \$474.00. The administrative record shows the claimant has earned more than \$4,740.00 in insured wages since the separation and prior to filing the claim for benefits.

The notice of claim was mailed to employer's address of record on October 28 and was received by employer within ten days. 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 November 8. The employer provided documentation showing the protest was faxed to Iowa Workforce Development (IWD) on November 8 at 4:11 p.m. The transmission ended and the protest was delivered to IWD one minute and eleven seconds later.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that employer has filed a timely protest and the claimant has requalified for benefits since the separation. Accordingly,

benefits are allowed, provided she is otherwise eligible, and the account of the employer shall not be charged.

Iowa Code § 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:

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.

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 employer has provided documentation showing IWD received or should have received the protest before end of business on November 8. Any delay in receipt of the protest was due to IWD error and the protest was timely received. The claimant has requalified for benefits since the separation from this employer by earning ten times the weekly benefit amount in insured wages following the separation. See Iowa Code §§ 96.5(1)g and 96.5(2)a. Accordingly, benefits are allowed, provided the claimant is otherwise eligible, and the account of the employer shall not be charged.

DECISION:

The November 16, 2021, reference 02, unemployment insurance decision is modified in favor of the appellant. The employer has filed a timely protest and the claimant has requalified for benefits since the separation. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer shall not be charged.



Stephanie R. Callahan
Administrative Law Judge

February 11, 2022
Decision Dated and Mailed

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