

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRENDA ZAPKA

Claimant

SEDONA STAFFING INC

Employer

APPEAL 19A-UI-09791-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/06/19

Claimant: Respondent (2R)

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Employer filed an appeal from the December 3, 2019 (reference 03) unemployment insurance decision that found employer's protest untimely. The parties were properly notified of the hearing. A telephone hearing was held on January 9, 2020, at 2:00 p.m. Claimant participated. Employer participated through Coleen McGuinty, Unemployment Insurance Administrator. Department's Exhibit D-1 was admitted.

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 600 35th Avenue, Moline, Illinois on October 10, 2019. That was employer's correct business address on that date. The employer completed and signed the Employer Statement of Protest on October 17, 2019. The Notice of Claim lists a due date of October 21, 2019. Employer's protest was submitted via facsimile on October 17, 2019. Employer received a confirmation that the fax was successful. Iowa Workforce Development (IWD) did not receive the protest. 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.

In this case, the employer submitted its protest prior to the due date. Employer's protest is timely. The issue of separation from employment should be remanded to the benefits bureau for an initial determination.

DECISION:

The December 3, 2019, (reference 03) 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