

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TYSON T FORD
Claimant

LINN FOODS INC
Employer

APPEAL 20A-UI-10614-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Respondent (4R)

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

The employer/appellant, Linn Foods Inc., filed an appeal from the August 20, 2020 (reference 02) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 19, 2020. The claimant, Tyson T. Ford, did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing.. The employer participated through David Linn.

The administrative law judge took official notice of the administrative records. Department Exhibits D1 and D2 were admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

NOTE TO EMPLOYER: To become a SIDES E-Response participant, you may send an email to iwd-sidesinfo@iwd.iowa.gov. To learn more about SIDES, visit <http://info.uisides.org>.

ISSUE:

Did employer file a timely protest?

STATEMENT OF THE CASE:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant filed a claim for unemployment insurance benefits with an effective date of March 29, 2020.

On April 6, 2020, Iowa Workforce Development (IWD) mailed a notice of claim to employer’s last address of record (Department Exhibit D-1). Employer received the notice of claim. 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. Employer recalls receiving the notice of claim, filling it out on the date received, putting it in an envelope with a “forever” postage stamp and driving it to the local post office to drop in the mailbox. Employer does not recall the exact date and forgot to make a copy of the notice of protest. For unknown reasons, the protest was not received by IWD.

The first notice of the claimant's claim for benefits was the receipt of the statement of charges mailed August 7, 2020 for the second quarter of 2020. The employer called IWD for guidance and filed its appeal on August 18, 2020 (Department Exhibit D-2). For unknown reasons, employer's appeal was treated as a protest to the original claim, and not an appeal to the statement of charges

Employer is protesting the claim on the basis that claimant voluntarily quit. The issues of the reason for the separation and requalification have not been adjudicated by the Benefits Bureau of the Iowa Workforce Development.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes employer's protest is 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. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 96.5, subsection 1, paragraphs "a" through "h". 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding § 96.8, subsection 5.

Iowa Admin. Code r. 871-24.35(2) 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.

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 Iowa Code § 96.6(2) dealing with timeliness of an appeal from a representative's decision states 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 has held that this statute clearly limits the time to do so, and compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979). The reasoning and holding of the *Beardslee* court is considered controlling on the portion of Iowa Code § 96.6(2) that deals with the time limit to file a protest after the notice of claim has been mailed to the employer.

The undisputed, credible evidence is the employer filed a protest in a timely manner but it was not received. Immediately upon receipt of information to that effect, a second appeal was filed. Therefore, the protest shall be accepted as timely.

DECISION:

The August 20, 2020 initial decision (reference 02) is modified in favor of the employer/appellant. The employer filed a timely protest.

REMAND:

The issues of the reason for the separation and whether the claimant has requalified for benefits and the employer should be relieved of charges for the benefits are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jennifer L. Beckman

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October 22, 2020
Decision Dated and Mailed

jlb/sam