

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**AARON L BARNES**  
Claimant

**ABSOLUTE OUTDOOR SERVICES INC**  
Employer

**APPEAL 20A-UI-10923-AW-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/05/20**  
**Claimant: Respondent (1)**

Iowa Code § 96.6(2) – Timeliness of Protest

**STATEMENT OF THE CASE:**

Employer filed an appeal from the September 2, 2020 (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 October 23, 2020, at 8:00 a.m. Claimant participated. Employer participated through Chad Williams, Owner. No exhibits were admitted. Official notice was taken of the administrative record.

**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 employer at its correct address on January 7, 2020. Employer received the Notice of Claim. Employer responded to the Notice of Claim by checking the box beside the statement "I am NOT protesting this claim." Employer completed the certification and returned the document to Iowa Workforce Development (IWD) on January 13, 2020.

The Notice of Claim states that employer's protest is due by January 17, 2020. Employer did not protest the claim because claimant was laid off by employer from January 1, 2020 until January 17, 2020. Claimant separated from employment with Employer on February 17, 2020. Employer did not notify IWD of the change in claimant's employment.

Employer received a Statement of Charges for the first quarter of 2020, which reflected charges for benefits paid to claimant. Employer did not protest that Statement of Charges because it expected charges related to claimant's layoff. Employer did not notice the amount exceeded two weeks' worth of unemployment benefits claimant would have received due to the layoff.

Employer protested the claim on August 18, 2020 after receiving its Statement of Charges for the second quarter of 2020, which reflected charges for benefits paid to claimant.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that employer's protest was untimely.

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) 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.

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 the Iowa Supreme Court in that decision to be controlling on this portion of that same Iowa Code section which deals with a time limit in which to file a protest after notification of the filing of the claim has been mailed.

The employer received the Notice of Claim prior to the protest due date. Employer did not submit a protest prior to the due date, because it did not have a basis for protesting the claim. Employer did not inform IWD of the change in claimant's employment status upon claimant's separation from employment. Employer did not submit a protest when claimant separated. Employer did not appeal the Statement of Charges for the first quarter of 2020 as it put

employer on notice that claimant was receiving unemployment insurance benefits for more than the two-week layoff in January 2020. Employer's protest is untimely; therefore, the administrative law judge is without jurisdiction to entertain any appeal regarding the separation from employment.

**DECISION:**

The September 2, 2020 (reference 03) unemployment insurance decision is affirmed. Employer's protest was untimely.



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Adrienne C. Williamson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

October 30, 2020

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Decision Dated and Mailed

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