

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DARREN EMLER
Claimant

SEDONA STAFFING INC
Employer

APPEAL 21A-UI-25412-JD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/24/21
Claimant: Respondent (2R)**

Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On November 16, 2021, the employer filed an appeal from the November 9, 2021, (reference 02) unemployment insurance decision that found the protest untimely and allowed benefits. After due notice was issued, a hearing was held by telephone conference call on January 13, 2022. The claimant participated. The employer participated through Colleen McGuinty, Unemployment Benefits Administrator. The administrative law judge took official notice of the administrative record.

ISSUE:

Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The claimant's notice of claim was mailed to employer's address of record on January 27, 2021, the notice of claim was received by the employer within the appeal time. 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 February 8, 2021. The employer filed its protest via fax on February 1, 2021. The claimant's separation from employment has not yet been the subject of a Benefits Bureau fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that employer has filed a timely protest response as by the Iowa Employment Security Law.

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.

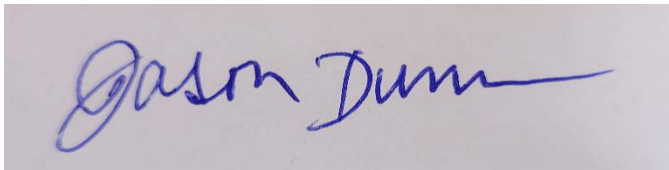
Another portion of this same Code section dealing with timeliness of an appeal from a representative's decision states that such an appeal must be filed within ten days after notification of that decision was mailed. In addressing an issue of timeliness of an appeal under that portion of this Code section, 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). In this case, the employer received the notice of claim before the appeal deadline. The employer faxed their protest on February 1, 2021. The employer submitted their written protest with a date stamp of February 1, 2021, along with their fax machine time log that corresponded with the February 1, 2021, date stamp with their appeal. The employer submitted direct evidence that the employer's protest was filed prior to the appeal deadline of February 8, 2021.

DECISION:

The November 9, 2021, (reference 02) unemployment insurance decision is reversed. The employer has filed a timely protest.

REMAND:

The separation issue is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision.



Jason Dunn
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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Des Moines, Iowa 50319-0209
Fax (515) 478-3528

February 14, 2022
Decision Dated and Mailed

jd/scn