

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**ALLISON SARA**  
Claimant

**724 X 2 LLC**  
Employer

**APPEAL 17A-UI-07217-JP-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/25/17**  
**Claimant: Respondent (2R)**

Iowa Code § 96.6(2) – Timeliness of Protest

**STATEMENT OF THE CASE:**

Employer filed an appeal from the July 17, 2017, (reference 01) decision that found the protest untimely and allowed benefits. After due notice was issued, a hearing was held by telephone conference call on August 3, 2017. Claimant participated. The employer participated by treasurer Bryce Henderson and manager Toni Klaren. The administrative law judge took official notice of the administrative record, including the Notice of Claim and protest.

**ISSUE:**

Is the employer's protest timely?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: Claimant's notice of claim was mailed to employer's address of record on June 30, 2017. The employer received claimant's notice of claim in its mailbox on July 12, 2017. 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 July 10, 2017. The employer did not file a protest response until July 12, 2017, which is after the ten-day period.

The employer is located in a mall. There are 30 tenants in the mall that use 1903 Park Avenue as their address. The employer is the only tenant that uses Suite 1700 with their address. The mail is delivered to a central location at the mall and uses mailboxes numbered 1 through approximately 52 for all of the tenants' mail. The employer uses the mailbox numbered 12 and it says Anytime Fitness Muscatine on the mailbox. Claimant's notice of claim was the first notice of claim it has received since Ms. Klaren has been managing the employer. Ms. Klaren started managing the employer in 2013. When Ms. Klaren filed the employer's protest, she requested on the fax cover sheet that Iowa Workforce Development update its address of record.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes that employer's protest is considered timely.

Iowa Code section 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.

The employer did not have an opportunity to protest the notice of claim because the notice was not received in a timely fashion. Ms. Klaren credibly testified that the employer did not receive the notice of claim in its mailbox until July 12, 2017, which was after deadline to file its protest. After the employer received the notice of claim, it immediately filed its protest. Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The employer filed the protest shortly after receiving the notice of claim. Therefore, the protest shall be accepted as timely.

**DECISION:**

The July 17, 2017, (reference 01) unemployment insurance decision is reversed. The employer 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.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

jp/rvs

**NOTE TO EMPLOYER:**

If you wish to change the address of record, please access your account at:

<http://www.myiowaui.org/UITIPTaxWeb/>.

Helpful information about using this site may be found at:

<http://www.iowaworkforce.org/ui/uiemployers.htm> and

<http://www.youtube.com/watch?v= mpCM8FGQoY>