

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

HARLEY D SUMMERS
Claimant

GDC INC
Employer

APPEAL 17A-UI-01509-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/25/16
Claimant: Respondent (2-R)

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Employer filed an appeal from the January 31, 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 March 2, 2017. Claimant participated. The employer participated by owner Glenda Cogley. Official notice was taken of the administrative record of the fact-finding documents, with no objection.

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 December 28, 2016, and was received by employer within ten days. 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. The employer mailed the notice of claim to Iowa Workforce Development (IWD) around January 1, 2017. The employer indicated that "The individual never worked for this employer." The employer's protest was received by IWD on January 4, 2017. The employer then received a letter from IWD dated January 12, 2017 acknowledging the receipt of claim, but that the records indicated reported wages for a prior employer, SPICER ENTERPRISES, and claimant worked for SPICER ENTERPRISES. The employer purchased trucks and routes from SPICER ENTERPRISES. IWD informed the employer that IWD considers the employer to be a successor employer of SPICER ENTERPRISES. The employer did not have access to SPICER ENTERPRISES's employee records and was not aware claimant had worked for SPICER ENTERPRISES. The employer then filed another protest dated January 23, 2017. Ms. Cogley testified that if the original notice had indicated that it was from employment with SPICER ENTERPRISES, the employer would have answered the original protest differently.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that employer did timely file its protest.

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.

The administrative law judge concludes the employer filed its protest within the time period prescribed by the Iowa Employment Security Law because it did initially reply to the notice of claim, indicating the claimant had not been an employee, within ten days from the initial notice date. Later, when the information that claimant had worked for SPICER ENTERPRISES became available to the employer, it forwarded the available information to the Agency. This is sufficient evidence of intent to protest any potential charges to its account.

DECISION:

The January 31, 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.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs