

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI	
BRANDON L STRIPLING Claimant	APPEAL NO. 18A-UI-09056-JTT
PORTER MOVING COMPANY LLC Employer	ADMINISTRATIVE LAW JUDGE DECISION
	OC: 04/08/18 Claimant: Respondent (2R)

Iowa Code Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 23, 2018 reference 04, decision that allowed benefits to the claimant provided he was otherwise eligible, that held the employer's account could be charged for benefits, and that held the employer's protest was untimely. After due notice was issued, a hearing was held by telephone conference call on September `18, 2018. Claimant Brandon Stripling did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. John Davis represented the employer. Exhibits 1 through 4 and Department Exhibits D-1 and D-2 were received into evidence.

ISSUES:

Whether the employer's protest of the claim for benefits was timely.
Whether there is good cause to deem the employer's late protest as timely.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: On April 17, 2018, Iowa Workforce Development mailed a notice of claim concerning the above claimant to the employer's address of record. The notice of claim contained a warning that any protest must be postmarked, faxed or returned by the due date set forth on the notice, which was April 27, 2018. The employer's address of record is a United States Postal Service post office box in Marion. The employer did not receive the notice of claim. The employer's first knowledge of Mr. Stripling's claim for benefits came in the form of the quarterly Statement of Charges that Iowa Workforce Development mailed to the employer on August 9, 2018. The State of Charges included a charge for benefits paid to Mr. Stripling. On August 20, 2018, John Davis, Operations Manager, submitted a written protest to the Iowa Workforce Development Tax Bureau in response to the Statement of Charges.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.7(2)a(6) provides:

2. Contribution rates based on benefit experience.
 - a. (6) Within forty days after the close of each calendar quarter, the department shall notify each employer of the amount of benefits charged to the employer's account during that quarter. The notification shall show the name of each individual to whom benefits

were paid, the individual's social security number, and the amount of benefits paid to the individual. An employer which has not been notified as provided in section 96.6, subsection 2, of the allowance of benefits to an individual, may within thirty days after the date of mailing of the notification appeal to the department for a hearing to determine the eligibility of the individual to receive benefits. The appeal shall be referred to an administrative law judge for hearing and the employer and the individual shall receive notice of the time and place of the hearing.

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.

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 evidence in the record establishes that the employer was denied an opportunity to submit a protest in response to the Notice of Claim and by the August 27, 2018 protest deadline set forth on the notice of claim. The employer did not receive the notice of claim, an error attributable either to Iowa Workforce Development or the United States Postal Service. The employer protested the claim on August 20, 2018 in a timely manner in response to receipt of the Statement of Charges that was mailed on August 9, 2018. Because the protest was timely, this matter will be remanded for a fact-finding interview to address the claimant's separation from the employment.

DECISION:

The August 23, 2018 reference 04, decision, decision is reversed. The employer's protest was timely. This matter is remanded to the Benefits Bureau for a fact-finding interview regarding the claimant's separation from the employment.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs