

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RAFAEL GONZALEZ VELASCO
Claimant

A+ LAWN & LANDSCAPING INC
Employer

APPEAL 22A-UI-03324-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/19/21
Claimant: Respondent (2R)**

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

On January 24, 2022, A+ Lawn & Landscaping Inc (employer/appellant) filed an appeal from the Iowa Workforce Development (IWD) decision dated January 12, 2022 (reference 01) that allowed benefits based on a finding employer’s protest untimely.

A telephone hearing was held on March 8, 2022. The parties were properly notified of the hearing. Rafael Gonzalez Velasco (claimant/appellant) did not appear or participate. Employer participated by HR Rep. Angela Duff.

Official notice was taken of the administrative record, including the notice of appeal and statement of protest. Employer’s Exhibit 1 was admitted.

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 the above address on December 23, 2021. That was employer’s correct business address on that date. The notice of claim contains a warning that the Employer Statement of Protest is due ten days from the initial notice date and gave a response deadline of January 3, 2022. The Notice of Claim further states “protest forms submitted to Iowa Workforce Development must be postmarked or faxed by the due date shown above.”

The employer completed the Statement of Protest and faxed it successfully to IWD on the due date, January 3, 2022, at approximately 11 a.m. It is unclear how or why the Department did not consider it to be submitted until the following day.

The claimant’s separation from employment has not yet been the subject of a Benefits Bureau fact-finding interview and determination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the decision dated January 12, 2022 (reference 01) that allowed benefits based on a finding employer's protest untimely is REVERSED.

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)(a) 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.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge has no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten-day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. *E.g. Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that "the submission of any ...appeal...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."

Employer followed the directions on the Notice of Claim and successfully faxed the Statement of Protest on the due date, January 3, 2022. The protest was therefore timely. Any delay in receiving or processing the protest was the result of agency error or delay.

DECISION:

The decision dated January 12, 2022 (reference 01) that allowed benefits based on a finding employer's protest untimely is REVERSED. The protest was timely.

REMAND:

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



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

March 17, 2022
Decision Dated and Mailed

abd/abd