

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

JAMES THOMAS
Claimant

PEETERS DEVELOPMENT CO INC
Employer

APPEAL NO. 22A-UI-19642-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/23/22
Claimant: Respondent (1)**

Iowa Code Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

On December 12, 2022, the employer filed a timely appeal from the December 9, 2022 (reference 02) 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 could not be considered because it was untimely. After due notice was issued, a hearing was held by telephone conference call on January 6, 2023. James Thomas (claimant) did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. Dan Peeters represented the employer. Exhibit 1, the employer's faxed appeal, was received into evidence. The administrative law judge took official notice of the notice of claim form that Iowa Workforce Development mailed to the employer's address of record, the completed notice of claim form that the employer submitted to and that was received by Iowa Workforce Development, and the IWD form documenting that agency's processing of the late protest.

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 October 31, 2022, 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 November 10, 2022. The employer's address of record for purposes of receipt of Iowa Workforce Development correspondence is the Davenport address of the employer's third-party accountant, Moore Patterson. The employer's business is located elsewhere. The weight of the evidence indicates the notice of claim was delivered to employer address of record in a timely manner, prior to the deadline for protest. However, the accounting firm did not contact the employer regarding the notice of claim until December 1, 2022. On that date, the accounting firm notified Dan Peeters, President of Peeters Development Company, that the accounting firm had received a notice of claim regarding claimant James Thomas. The accounting firm did not tell Mr. Peeters how long the accounting firm had the notice of claim in

its possession prior to contacting Mr. Peeters. The weight of the evidence establishes the accounting firm likely had the notice of claim in its possession for close to one month prior to contacting Mr. Peeters about the matter. On December 5, 2022, Mr. Peeters added the employer's protest information to the notice of claim form. On December 6, 2022, Mr. Peeters mailed the notice of claim/protest to Iowa Workforce Development by certified mail. Mr. Peeters advises he has a December 6, 2022 receipt for the certified mailing. Iowa Workforce Development Unemployment Insurance Service Center received the protest on December 8, 2022. Iowa Workforce Development did preserve the postmark date or the envelope in which the employer mailed the protest.

REASONING AND CONCLUSIONS OF LAW:

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.

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). The administrative law judge considers the reasoning and holding of the court to be controlling on this portion of that same Iowa Code section which deals with a time limit in which to file a protest after notification of the filing of the claim has been mailed.

Iowa Administrative Code Rule 871-24.8(2)(a) and (b) provide as follows:

- (2) Responding by employing units to a notice of the filing of an initial claim or a request for wage and separation information and protesting the payment of benefits.
 - a. The employing unit which receives a Form 65-5317, Notice of Claim, or a Form 68-0221, Request for Wage and Separation Information, must, within ten days of the date of the notice or request, submit to the department wage or separation information that affects the individual's rights to benefits, including any facts which disclose that the individual separated from employment voluntarily and without good cause attributable to the employer or was discharged for misconduct in connection with employment.
 - b. The employing unit may protest the payment of benefits if the protest is postmarked within ten days of the date of the notice of the filing of an initial claim. In the event that the tenth day falls on a Saturday, Sunday or holiday, the protest period is extended to the next working day of the department. If the employing unit has filed a timely report of facts that might adversely affect the individual's benefit rights, the report shall be considered as a protest to the payment of benefits.

Iowa Administrative Code Rule 871-24.35(1) provides:

Date of submission and extension of time for payments and notices.

(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 of 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 those outlined in paragraphs 24.35(1)"a" and "b", on the date it is received by the division.

Iowa Administrative Code Rule 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 an untimely protest. The employer presented insufficient evidence, and insufficiently direct and satisfactory evidence, to support the employer's speculative assertion that the United States Postal Service delivered the notice of claim on December 1, 2022. The employer elected to have Iowa Workforce Development direct IWD correspondence to the employer's third-party accountant at the accounting firm's address. The employer does not know the date on which the United States Postal Service delivered the notice of claim to the accounting firm's address and does not know how long the accounting firm had the notice of claim in its possession prior to contacting the employer about the matter. The employer elected not to present testimony from the accounting firm personnel. The employer did not present as evidence the envelope in which IWD mailed the notice of claim. The employer presented insufficient evidence to rebut the presumption of timely delivery of the notice of claim to the employer's agent at the address of record. The weight of the evidence

indicates the employer, through its agent, received the notice of claim in a timely manner, had a reasonable opportunity to file a protest by the November 10, 2022 deadline, but failed to file a protest until the first week of December 2022. Delayed action on the part of the employer or its agent caused the protest to be late. The late filing was not attributable to Iowa Workforce Development or the United States Postal Service. There is not good cause to treat the late protest as a timely protest. Because the protest was untimely, the administrative law judge lacks jurisdiction to disturb IWD's initial determination regarding the nature of the claimant's separation from the employment, the claimant's eligibility for benefits, and the employer's liability for benefits. IWD's initial determination of the claimant's eligibility for benefits and the employer's liability for benefits remains in effect.

During the hearing, the employer referred to "the War Eagle case." The employer did not have the legal citation at the time of the hearing. Upon search of Iowa appellate decisions, the administrative law judge concludes the employer must be referring to *War Eagle Village Apartments v. Plummer*, 775 NW2d 714 (Iowa 2009). The *War Eagle* case deals with landlord-tenant law and notice required in the context of a forcible entry and detainer (FED, eviction). *War Eagle* is not relevant or controlling case law in the present matter.

DECISION:

The December 9, 2022 (reference 02) decision is affirmed. The employer's protest was untimely. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.



James E. Timberland
Administrative Law Judge

January 10, 2023
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.