

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICSI M GARCIA
Claimant

ACATIC LLC
Employer

APPEAL 18A-UI-09734-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/19/18
Claimant: Respondent (2R)**

Iowa Code § 96.6(2) – Timeliness of Protest
Iowa Admin. Code r. 871-24.35 – Date of Submission

STATEMENT OF THE CASE:

Acatic, LLC, Employer, filed an appeal from the September 13, 2018, (reference 01) unemployment insurance decision that found the protest untimely and determined the claimant, Micsi Garcia, was eligible for unemployment insurance benefits. The parties were properly notified of the hearing. A telephone hearing was held on October 8, 2018 at 11:00 a.m. Claimant did not participate. Employer participated through Rafael Lujano, Manager. Exhibit D1 was admitted.

ISSUE:

Whether employer filed a timely protest.

FINDINGS OF FACT:

As the employer was the only witness, the administrative law judge makes the following findings of fact based solely upon the employer's testimony: The Notice of Claim was mailed to Acatic, LLC at the correct address on August 23, 2018. (Exhibit D1) The employer does not recall the exact date that he received the Notice of Claim in the mail. (Lujano Testimony) Employer does not know how long it usually takes to receive mail from Des Moines, Iowa. (Lujano Testimony) Employer checks the mail every day or two. (Lujano Testimony) Employer completed the protest and faxed it to the Appeals Bureau the day it received the Notice of Claim, which was September 10, 2018. (Lujano Testimony; Exhibit D1) The protest was received by the Appeals Bureau that same day. (Exhibit D1) The Notice of Claim lists a due date of September 4, 2018. (Exhibit D1)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer's protest was timely. The matter is remanded for a fact-finding interview and unemployment insurance decision.

Iowa Code section 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) 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:

(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.

The employer did not receive the notice until after the due date had passed. The employer was deprived of a reasonable opportunity to protest the notice of claim, because the notice was not received in a timely fashion. Without timely notice, 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 completed and filed the protest the same day that the notice of claim was received. Therefore, the protest shall be accepted as timely.

DECISION:

The September 13, 2018, (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.

Adrienne C. Williamson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, IA 50319-0209
Fax: 515-478-3528

Decision Dated and Mailed

acw/rvs