

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHAEL E ARP
Claimant

APPEAL NO. 23A-UI-11342-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SPLASH POOL & SPA BUILDERS LLC
Employer

**OC: 11/12/23
Claimant: Respondent (2R)**

Iowa Code Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

On December 6, 2023, the employer filed a timely appeal from the December 4, 2023 (reference 02) decision that allowed benefits to the claimant, provided the claimant was otherwise eligible, and that ruled the employer's account could be charged for benefits, based on the deputy's determination the employer's was untimely and therefore could not be considered. After due notice was issued, a hearing was held on December 21, 2023. Michael Arp (claimant) participated. Emily Carlson represented the employer and presented additional testimony through Gail Shrope. Exhibit 1 was received into evidence. The administrative law judge took official notice of the notice of claim/protest received and process by IWD and DBRO.

ISSUE:

Whether the employer's protest of the claim for benefits was timely.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds:

Michael Arp (claimant) established an original claim for benefits that was effective November 12, 2023. Splash Pool & Spa is a base period employer but not the most recent base period employer.

On November 16, 2023, Iowa Workforce Development mailed a notice of claim to the employer's last-known address of record. The notice of record was a secondary facility in Hiawatha that the employer ceased using in August 2023 when the employer consolidated operations at its Cedar Rapids location. The employer's address of record on file with Iowa Workforce Development for purposes of receiving notice of claims continued to be the Hiawatha address in both the TN3270 mainframe system and at MyIowaUI.org. When the employer consolidated operations at the Cedar Rapids location, the employer executed a mail forwarding request with the United States Postal System. Pursuant to the mail forwarding address, the USPS forwarded the notice of claim to the employer's Cedar Rapids business address. 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 27, 2023. The notice of claim provided instructions for filing a protest/response via fax or mail.

The employer received the notice of claim in a timely manner, prior to the deadline for protest. On November 24, 2023, Emily Carlson, President, completed the employer's protest information on the notice of claim form and certified the accuracy of that information. Ms. Carlson added the November 24, 2023 certification date next to her signature in the blank provided for that purpose. On the morning of November 27, 2023, Gail Shrope, Administrative Coordinator, prepared the protest/response to be mailed and deposited the correspondence in a mail drop box outside the Hiawatha Post Office between 9:00 and 9:30 a.m. The last scheduled mail pickup was at 4:00 p.m.

Iowa Workforce Development personnel stamped the protest as received on November 29, 2023. IWD personnel also stamped not protest "LATE." IWD did not preserve the envelopment in which the protest was mailed. IWD did not note the postmark date on the notice of claim/protest form. There is no indication the protest was submitted by a means other than regular mail.

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 employer filed a timely protest. The evidence indicates the employer completed the protest information on November 24, 2023 and that the employer then mailed the protest on early enough on November 27, 2023 for the correspondence to be postmarked on November 27, 2023. IWD failed to preserve the postmarked envelope in which the employer mailed the protest and failed to otherwise note the postmark date when processing the protest on

November 29, 2023. There is no evidence to indicate a submission by any means other than mail. In the absence of the postmark information, the protest filing date is the November 24, 2023 completion date.

In light of the timely protest, this matter will be remanded to Iowa Workforce Development Benefits Bureau for a fact-finding interview regarding the February 18, 2023 separation that the employer characterizes as a quit to accept other employment. The Benefits Bureau may also elect to enter a 10X requalification decision in light of the claimant's earnings from insured work after the separation from this employer and prior to establishing the unemployment insurance claim.

DECISION:

The December 4, 2023 (reference 02) decision is REVERSED. The employer's protest was timely.

REMAND:

This matter is REMANDED to Iowa Workforce Development Benefits Bureau for a fact-finding interview regarding the February 18, 2023 separation that the employer characterizes as a quit to accept other employment. The Benefits Bureau may also elect to enter a 10X requalification decision in light of the claimant's earnings from insured work after the separation from this employer and prior to establishing the unemployment insurance claim.



James E. Timberland
Administrative Law Judge

December 27, 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
6200 Park Ave Suite 100
Des Moines, Iowa 50321
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
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: 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.