

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ERIC L ESSARY
Claimant

SNAP-ON LOGISTICS COMPANY
Employer

APPEAL 17A-UI-05837-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/04/16
Claimant: Respondent (1)

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Employer filed an appeal from the June 1, 2017, (reference 03) decision that found the protest untimely and allowed benefits. After due notice was issued, a hearing was held by telephone conference call on June 21, 2017. Claimant participated. The employer participated by human resources specialist Joanie Leerar and human resources manager Jodie Rath. Margary Arthur registered for the hearing on behalf of the employer, but was not present at the number that was registered. Employer Exhibit 1 was admitted into evidence with no objection. Department Exhibit D-1 was admitted into evidence with no objection. Official notice was taken of the administrative record, including the Notice of Claim, protest, and fact-finding documents, with no objection.

ISSUE:

Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Notice of claims for the employer are sent to the employer's third party representative ADP INC. AND TALX UCM SERVICE (hereinafter "the employer's third party representative"). Iowa Workforce Development (IWD) notifies the employer's third party representative via the SIDES system when there is a notice of claim for the employer. The employer's third party representative then notifies the employer about the notice of claim. The employer responds to the employer's third party representative with information regarding the notice of claim and the employer's third party representative then responds to IWD. The employer has utilized the employer's third party representative for at least three years. Ms. Leerar is normally the contact person for the employer with the employer's third party representative.

Claimant's notice of claim was provided to the employer's third party representative in the SIDES system with an e-mail alert on December 5, 2016. The notice of claim contains a warning that the employer protest response is due ten days from the initial notice date and gave a response deadline of December 16, 2016. Ms. Leerar did not have any documentation regarding the Notice of Claim for claimant. Any electronic documents (e-mails) that Ms. Leerar would have communicated with the employer's third party representative are purged after three months. Ms. Leerar is not aware of any protest being filed. Ms. Leerar is not aware if a protest

was filed on December 15, 2016. Ms. Leerar is not aware if a protest was filed on December 16, 2016. Ms. Leerar is not aware of any other employee for the employer handling claimant's notice of claim. The administrative record reflects IWD did not receive the employer's protest response until February 27, 2017, which is after the ten-day period.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that employer has failed to protest response within the time period prescribed by the Iowa Employment Security 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 an unemployment insurance decision states that such an appeal must be filed within ten days after notification 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 setting 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. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979). The administrative law judge considers the reasoning and holding of that court in that decision 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 Admin. Code r. 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 by any means other than the United States postal service on the date it is received by the division.

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 employer did not present any evidence that it or its third party representative failed to receive an alert through the SIDES system of the notice of claim for claimant. The administrative record reflects that an alert was sent to the employer's third party representative on December 5, 2016 with a response due date of December 16, 2016. Although Employer Exhibit 1 and Department Exhibit D-1 allege a protest was filed on December 16, 2016 and December 15, 2016 respectfully, Ms. Leerar was not aware of any protest being file on either date. Furthermore, the administrative record reflects that the first protest Iowa Workforce Development received on behalf of the employer was dated February 27, 2017. Department Exhibit D-1. The employer failed to present sufficient evidence that it did file a protest before the protest that was received on February 27, 2017.

The employer also has not shown any good cause for failure to comply with the jurisdictional time limit or that the delay was due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). Therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the claimant's separation from employment or authority to remand for a fact-finding interview. Iowa Code § 96.6(2).

DECISION:

The June 1, 2017, (reference 03) unemployment insurance decision is affirmed. Employer has failed to file a timely protest response, and the unemployment insurance decision shall stand and remain in full force and effect.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs