

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JUAN S JUAN
Claimant

QDOBA RESTAURANT CORPORATION
Employer

APPEAL 21A-UI-15711-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/22/20
Claimant: Respondent (4R)

Iowa Code § 96.6(2) – Timeliness of Protest
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The employer filed an appeal from the June 18, 2021, (reference 02) decision that allowed benefits and found the protest untimely. After due notice was issued, a hearing was held by telephone conference call on September 2, 2021. Claimant participated. Employer participated through Elizabeth Herrington, UCM. Department's Exhibits D-1 and D-2 were received. Official notice of the administrative records was taken.

NOTE TO EMPLOYER: To become a SIDES E-Response participant, you may send an email to iwd-sidesinfo@iwd.iowa.gov. To learn more about SIDES, visit <http://info.uisides.org>.

If you wish to change the address of record, please access your account at:
<https://www.myiowaui.org/UITIPTaxWeb/>.

ISSUE:

Is the employer's appeal timely?
Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: On December 2, 2020, Iowa Workforce Development mailed a notice of claim to employer's address of record at 9330 Balboa Avenue in San Diego, California. Employer received the notice of claim within ten days. The notice of claim contains a warning that any protest must be postmarked, faxed or returned no later than ten days from the initial mailing date. The employer did not file a protest until January 25, 2021 (See Department Exhibit D- 1).

An initial decision allowing benefits was then mailed to the employer's address of record on June 28, 2021 (reference 04). The initial decision stated an appeal was due within ten days from the mailing date. The initial decision was mailed to the same San Diego address. The employer filed its appeal on July 14, 2021 (See Department Exhibit D-2).

Employer stated it did not receive the notice of claim and initial in a timely manner because the documents were not mailed to the employer's agent's address listed in Houston, Texas. Administrative records reflect Hiretech has been the third party vendor since 2019 and requested a Houston address be used for mailing purposes. For unknown reasons, records reflect the San Diego address still as the address of record for this employer. As a result, employer would not have expected to receive unemployment insurance mail in San Diego, and then would have forwarded it its vendor for handling.

The administrative records reflect the issue of claimant's separation/requalification has not yet been addressed by the Benefits Bureau.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge modifies the initial decision in favor of the employer/appellant.

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.

The employer did not have an opportunity to protest the notice of claim or appeal because the notices were not received in a timely fashion. Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). For unknown reasons, IWD mailed the initial decision directly to a location in San Diego rather than its power of attorney. The delay in filing the appeal and notice of protest was due to agency error. Iowa Admin. Code r. 871-24.35(2). Therefore, they shall be accepted as timely filed.

The issue of claimant's separation/requalification is remanded to the Benefits Bureau for an initial investigation.

DECISION:

The June 18, 2021, (reference 02) unemployment insurance decision is modified in favor of the appellant. The employer has filed a timely appeal and protest, and the claimant quit to accept other employment. Benefits are allowed, provided the claimant is otherwise eligible.

REMAND:

The issue of claimant's separation/requalification is remanded to the Benefits Bureau for an initial investigation.



Jennifer L. Beckman
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

September 13, 2021
Decision Dated and Mailed

jlb/mh