

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**COLTON J SCHAU**  
Claimant

**MIDDENDORFF WELL CO INC**  
Employer

**APPEAL 20A-UI-00155-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/08/19**  
**Claimant: Respondent (1)**

Iowa Code § 96.6(2) – Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer filed an appeal from the December 26, 2019, (reference 03) unemployment insurance decision that allowed benefits and concluded the employer filed an untimely protest. The parties were properly notified about the hearing. A telephone hearing was held on January 27, 2020. The claimant participated. The employer participated through Kathi Middendorff, secretary/treasurer.

The administrative law judge took official notice of the administrative records including the notice of claim. Department Exhibit D-1 was admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

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

**ISSUE:**

Did the employer file a timely protest?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed for this employer until August 28, 2018.

A notice of claim was mailed to the employer's address of record on December 10, 2019. It is a valid mailing address. The employer checks the PO Box every 4-5 days. Ms. Middendorff received the notice of claim on December 17 or 18, 2019. Ms. Middendorff mistakenly referenced December 16, 2019 as the completion date (Department Exhibit D-1, Middendorff testimony). The notice of claim contained a warning that a response was due by December 20, 2019 and that failure to submit a timely protest may result in the employer being charged for benefits (See administrative file/notice of claim).

The employer did not file a protest response until December 21, 2019 via fax, which is after the ten-day period (Department Exhibit D-1). Ms. Middendorff thought she took the protest to be

faxed at Lewis Drug on December 20, 2019 and not December 21, 2019, but did not wait for the document to be faxed or have a fax confirmation or proof that it was faxed on December 20, 2019, instead of December 21, 2019.

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, 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.

Iowa Admin. Code r. 871-24.8(2) provides:

Notifying employing units of claims filed, requests for wage and separation information, and decisions made.

24.8(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 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.

c. If the employing unit protests that the individual was not an employee and it is subsequently determined that the individual's name was changed, the employing unit shall be deemed to have not been properly notified and the employing unit shall again be provided the opportunity to respond to the notice of the filing of the initial claim.

d. The employing unit has the option of notifying the department under conditions which, in the opinion of the employing unit, may disqualify an individual from receiving benefits. The notification may be submitted electronically.

(1) The Notice of Separation, Form 60-0154, must be postmarked or received before or within ten days of the date that the Notice of Claim, Form 65-5317, was mailed to the employer. In the event that the tenth day falls on Saturday, Sunday or holiday, the protest period is extended to the next working day of the department. If a claim for

unemployment insurance benefits has not been filed, the Notice of Separation may be accepted at any time.

Iowa Admin. Code r. 871-24.35(2) provides:

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

24.35(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 division 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.

In this case, the employer failed to file a timely protest within the prescribed period. The employer received the notice of claim but did not confirm the fax was sent or transmitted when Ms. Middendorff requested assistance of a local business' fax machine. The delay in protesting the claimant was not due to any *Agency error or misinformation or delay or other action of the United States Postal Service* pursuant to Iowa Admin. Code r. 871-4.35(2). The administrative law judge is sympathetic to the employer but no other good cause reason has been established for the delay. The administrative law judge further concludes that the employer has failed to timely protest pursuant to Iowa Code § 96.6(2), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the claimant's termination of employment. See, *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979); *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979) and *Pepsi-Cola Bottling Co. v. Emp't Appeal Bd.*, 465 N.W.2d 674 (Iowa Ct. App. 1990).

**DECISION:**

The December 26, 2019, (reference 03) unemployment insurance decision is affirmed. The employer has failed to file a timely protest response, and the unemployment insurance decision shall stand and remain in full force and effect.

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Decision Dated and Mailed

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