

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KYLE W BIXLER
Claimant

DARWIN LOURENS
Employer

**APPEAL 19A-UI-08021-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/22/19
Claimant: Respondent (1)**

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Employer filed an appeal from the October 11, 2019 (reference 02) unemployment insurance decision that found employer's protest untimely. The parties were properly notified of the hearing. A telephone hearing was held on November 4, 2019 at 3:00 p.m. Claimant did not participate. Employer participated through Darwin Lourens, Owner. Department's Exhibits D1 – D3 were admitted. Official notice was taken of the administrative record.

ISSUE:

Whether employer filed a timely protest.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Notice of Claim was mailed to 1423 Edgewood Drive, Pella, Iowa on September 24, 2019. (Exhibit D1) That was employer's correct business address on that date. (Lourens Testimony) The employer completed and signed the Employer Statement of Protest on October 1, 2019. (Exhibit D1) The Notice of Claim lists a due date of October 4, 2019. (Exhibit D1) Employer's protest was postmarked October 7, 2019 (Exhibit D3) and received by Iowa Workforce Development on October 9, 2019 (Exhibit D1). Employer provided no reason for the delay in mailing the protest to Iowa Workforce Development. (Lourens Testimony)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that employer's protest was untimely.

Iowa Code § 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)(a) 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:

(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 on 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.

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.

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 Iowa Supreme 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.

The employer received the notice of claim at least three days prior to the due date, but did not mail it to Iowa Workforce Development until three days after the due date. Employer provided no reason attributable to the agency or the United States Postal Service for the delay in submitting its protest. Employer's protest is untimely; therefore, the administrative law judge is without jurisdiction to entertain any appeal regarding the separation from employment.

DECISION:

The October 11, 2019 (reference 02) unemployment insurance decision is affirmed. Employer's protest was untimely.

Adrienne C. Williamson
Administrative Law Judge
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Iowa Workforce Development
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Decision Dated and Mailed

acw/scn