

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JIM J CREEK
Claimant

CRESCO SMALL ENGINE REPAIR & SERV
Employer

APPEAL 21A-UI-12412-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/05/20
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

Cresco Small Engine Repair & Serv, the employer/appellant, filed an appeal from the September 16, 2020, (reference 02) unemployment insurance decision that found the protest untimely and allowed benefits. After due notice was issued, a hearing was held on July 20, 2021. The employer participated through Michael Bergan, owner and manager. Mr. Creek participated and testified. Official notice was taken of the administrative record.

ISSUES:

Is the employer's appeal filed on time?
Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Creek's notice of claim was mailed to employer's address of record on January 13, 2020, and was received by employer within ten days. The notice of claim contains a warning that the employer's protest response is due ten days from the initial notice date and gave a response deadline of January 23, 2020. The employer did not respond to the notice of claim because Mr. Creek worked for other employers after he separated from employment with this employer and the employer assumed that the accounts Mr. Creek's other employers would be charged and not the employer's account.

The employer received a statement of charges for the quarter ending March 31, 2020 and another statement of charges for the quarter ending June 30, 2020. The employer appealed both statements of charges via email on August 25, 2020. An appeal hearing was scheduled for October 19, 2020 at 8:30 a.m. in Appeal 20A-UI-10647-AD-T. The issues in that appeal were:

- 1) Did the employer file its protest of the January 13, 2020 notice of claim on time?
- 2) Was the employer's appeal from the statement of charges filed on time?
- 3) Was the statement of charges correct?

On September 16, 2020, Iowa Workforce Development issued a decision finding the employer's protest of the January 13, 2020 notice of claim was not filed on time and allowed benefits. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by September 26, 2020. . If the date falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. September 26, 2020 was a Saturday; therefore, the deadline was extended to Monday, September 28, 2020. The employer did not receive this decision in the mail.

The employer did not provide a telephone number at which it could be reached for the October 19, 2020 scheduled hearing. As a result, no hearing was held and the employer's appeal was dismissed by the administrative law judge's decision dated October 20, 2020. The employer did not appeal the administrative law judge's decision.

On, or about, May 10, 2021, the employer received a statement of charges for the quarter ending March 31, 2021. The employer appealed the statement of charges by sending a letter via the United States Postal Service, postmarked on May 11, 2021. Iowa Workforce Development received the appeal on May 13, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer's appeal from the September 16, 2020 decision was filed on time.

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision."

Iowa Admin. Code r. 871-24.35(1) 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 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 [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

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.

The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott* 319 N.W.2d 244, 247 (Iowa 1982).

The employer did not receive the decision in the mail before the deadline and, therefore, could not have filed an appeal prior to the appeal deadline. The notice provision of the decision was invalid. When the employer received the statement of charges for the quarter ending March 31, 2021 and realized that its account was still being charged, the employer appealed the next day. The employer's appeal of the September 16, 2020 decision was filed on time.

The administrative law judge further concludes that the employer failed to protest the January 13, 2020 notice of claim within the time period prescribed by the Iowa Employment Security Law.

Iowa Code § 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 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.

The employer received the notice of claim in the mail before the deadline and, therefore, could have filed an appeal prior to the appeal deadline. The notice provision was valid. The employer's delay was not due to an error or misinformation from the Department or due to delay or other action of the United States Postal Service. No other good cause reason has been established for the delay. The employer's protest of the January 13, 2020 notice of claim was not filed on time and the administrative law judge lacks jurisdiction (authority) to decide the other issues in this matter.

DECISION:

The employer's appeal of the September 16, 2020, (reference 02) decision was filed on time. The employer's protest of the January 13, 2020 notice of claim was not filed on time. The September 16, 2020, (reference 02) unemployment insurance decision is affirmed.



Daniel Zeno
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July 28, 2021
Decision Dated and Mailed

dz/kmj