

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARC J. WALKER
Claimant

BAUER BUILT MANUFACTURING INC.
Employer

APPEAL 22A-UI-03156-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/19/21
Claimant: Respondent (2R)**

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

On January 14, 2022, Bauer Built Manufacturing Inc. (employer) filed an appeal from the January 10, 2022, reference 03, unemployment insurance decision that found the protest untimely and allowed Marc J. Walker (claimant) to receive benefits. After due notice was issued, a telephone hearing was held on March 1, 2022. The claimant participated. The employer participated through Human Resources General Manager, Brad Mueggenberg. Exhibit 1 was admitted into the record. The administrative law judge took official notice of the administrative record, including the notice of claim and protest.

ISSUE:

Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The claimant separated from employment on November 30, 2020 and filed a claim for benefits effective December 19, 2021.

The notice of claim was mailed to employer's address of record on December 23, 2021. The envelope containing the notice of claim was post marked on December 28, 2021. (Exhibit 1, pg. 2. The employer did not receive the notice of claim until January 3, 2022. 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 January 3, 2022. The employer submitted their notice of protest to Iowa Workforce Development (IWD) by fax on January 3, 2022 at 2:01 p.m. (Exhibit 1, pg. 3).

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the employer's protest if timely.

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 law provides that all interested parties shall be promptly notified about an individual filing a claim. The parties have ten days from the date of mailing the notice of claim to protest payment of benefits to the claimant. Iowa Code § 96.6(2). Another portion of section 96.6(2) dealing with timeliness of an appeal from a representative's decision states 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 has held that this statute clearly limits the time to do so, and 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 reasoning and holding of the Beardslee court is considered controlling on the portion of Iowa Code section 96.6(2) that deals with the time limit to file a protest after the notice of claim has been mailed to the employer. The employer provided credible proof they submitted their notice of protest on January 3, 2022, at 2:01 p.m. IWD did not receive it until January 4, 2022. When the Department allows employers to submit a protest by fax, the Department has the responsibility to make sure its equipment works properly and, in this case, did not. As a result, the notice of protest is timely. The issue of claimant's separation is remanded to the Benefits Bureau for an initial investigation and determination.

DECISION:

The January 10, 2022, (reference 03) unemployment insurance decision is REVERSED. The employer filed a timely protest.

REMAND:

The separation issue is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision.



Carly Smith
Administrative Law Judge

March 21, 2022

Decision Dated and Mailed

cs/mh