

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

LARRY E CURRIER
Claimant

ENRG INC
Employer

APPEAL NO. 23A-UI-00288-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/02/22
Claimant: Respondent (2R)**

Iowa Code Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

On January 11, 2023, the employer filed a timely appeal from the January 6, 2023 (reference 03) decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on Iowa Workforce Development's determination that the employer's protest could not be considered because it was untimely. After due notice was issued, a hearing was held by telephone conference call on January 30, 2023. Larry Currier (claimant) did not respond to the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Nicholas Steinbeck represented the employer. Exhibits 1, 2 and 3, consisting of the online appeal and two attached myiowau.org screenshots respectively, were received into evidence. The administrative law judge took official notice of the following Iowa Workforce Development records: the notice of claim form, the employer protest materials received and processed by Iowa Workforce Development, the employer's myiowau.org account data, and the employer account data in TN3270 EMP1.

ISSUES:

Whether the employer's protest of the claim for benefits was timely.
Whether there is good cause to deem the employer's late protest as timely.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds:

Nicholas Steinbeck, through ENRG, Inc., an S-corporation, owns and operates two Itech Gurus locations. The employer's primary place of business is at Suite 200, 6027 University Avenue, Cedar Falls, Iowa 50613. The employer also operates a satellite location at 8475 Hickman Road, Urbandale, Iowa 50322. Iowa Workforce Development records (TN3270, EMP1) reflect an employer account number of 314640 and the associated Cedar Falls mailing address of record, though the IWD record omits the suite number. The EMP1 record references ENRG and ITECH. Iowa Workforce Development records located on the myiowau.org database reflect the Cedar Falls mailing address, but include suite number 100, rather than suite number 200. Mr. Steinbeck advises that his former partner was located in Suite 100 and adds that ENRG, Inc. is able to receive mail in a timely manner at the Cedar Falls location, regardless of

whether it is addressed to Suite 100 or Suite 200. In January 2023, Mr. Steinbeck took steps to set up his own myiowaui.org account, but those actions do not impact the present matter.

On December 19, 2022, Iowa Workforce Development mailed a notice of claim concerning claimant Larry Carrier to the Urbandale business address, rather than to the Cedar Falls address of record. The notice of claim form omits the employer account number. The missing employer account number signals that Iowa Workforce Development likely relied upon employer address information provided by the claimant and did not associate that information with the established employer account number or established address of record. The notice of claim contained a warning that any protest must be postmarked, faxed or returned by the due date set forth on the notice, which was December 29, 2022. The notice of claim was delivered to the Urbandale business address in a timely manner, but no one at that location was authorized to open, review and respond to the correspondence.

On either Tuesday, December 27 or Thursday, December 29, 2022, Brad Martin, Operations Manager, traveled to the Urbandale location and collected mail delivered to that address, including the notice of claim correspondence. No one at the Urbandale location was authorized to open, review or respond to the time-sensitive correspondence. On December 28 or 30, 2022, Mr. Martin left the notice of claim correspondence on Mr. Steinbeck's desk. If the correspondence was left for Mr. Steinbeck on December 28, 2022, that would leave the remainder of December 28 and all of December 29 to complete and transmit a timely protest. If the correspondence was left for Mr. Steinbeck on December 30, 2022, it was too late at that point to submit a protest by the protest deadline.

On January 3, 2023, Mr. Steinbeck added the employer's protest information to the notice of claim form. Late in the day on January 3, 2023, Mr. Steinbeck faxed the completed notice of claim/protest form and two attached documents to Iowa Workforce Development Benefits Bureau. IWD customer service stamped the correspondence as received on January 4, 2023, though the correspondence was actually received on January 3, 2023. There is no fax transmission information on the correspondence. In one of the attached documents, Mr. Steinbeck wrote "Sorry for the delay on this. Been out because of the holidays and trying to get caught up."

REASONING AND CONCLUSIONS OF 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.

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 court 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.

Iowa Administrative Code Rule 871-24.8(2)(a) and (b) provide as follows:

(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 a 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.

Iowa Administrative Code Rule 871-24.35(1) provides:

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

(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 those outlined in paragraphs 24.35(1)"a" and "b", on the date it is received by the division.

Iowa Administrative Code Rule 871-24.35(2) provides:

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

(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 department 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.

The evidence the record establishes good cause to treat the January 3, 2023 late protest as a timely protest. Iowa Workforce erred by sending the notice of claim form to the Urbandale location, rather than the Cedar Falls address of record. IWD's error hindered the employer's response, denied the employer reasonable opportunity to file a protest by the protest deadline, and significantly contributed to the late filing of the protest. Accordingly, this matter will be remanded to the Iowa Workforce Development Benefits Bureau for a fact-finding interview regarding the claimant's December 8, 2022 discharge from the employment.

DECISION:

The January 6, 2023 (reference 03) decision is REVERSED. There is good cause, attributable to Iowa Workforce Development error, to deem the employer's late protest a timely protest.

REMAND:

This matter is REMANDED to the Iowa Workforce Development Benefits Bureau for a fact-finding interview regarding the claimant's December 8, 2022 discharge from the employment.



James E. Timberland
Administrative Law Judge

February 2, 2023
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.