

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MILES L LYTIS
Claimant

PERFICUT COMPANIES INC
Employer

APPEAL 19A-UI-00132-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/09/18
Claimant: Respondent (2R)

Iowa Code § 96.6(2) - Timeliness of Protest

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the January 2, 2019 (reference 02) unemployment insurance decision which found that the employer's protest cannot be accepted because it was not timely. The parties were properly notified of the hearing. A telephone hearing was held on January 23, 2019. The claimant did not participate. The employer participated through witness Wes Brommel. Department's Exhibit D1 was admitted. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

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:

A notice of claim was mailed to the employer at its last known address of record on December 17, 2018. See Exhibit D1. The employer's statement of protest was due to be returned to Iowa Workforce Development ("IWD") on December 27, 2018. See Exhibit D1. Mr. Brommel completed and signed the statement of protest on December 27, 2018. See Exhibit D1.

The employer attempted to fax the protest to IWD on or about December 27, 2018; however, each of the three fax numbers to IWD rang busy and were unable to accept the fax. The claimant's separation from employment has not yet been the subject of a Benefits Bureau fact-finding interview and initial determination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes employer's protest is considered timely.

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. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 96.5, subsection 1, paragraphs "a" through "h". Unless 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding § 96.8, subsection 5.

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 Iowa Code § 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 § 96.6(2) that deals with the time limit to file a protest after the notice of claim has been mailed to the employer.

Iowa Admin. Code r. 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.

(emphasis added).

The employer attempted to fax the protest to IWD's three separate fax numbers; however, the department's fax machine was not accepting the fax properly. As such, this is considered division error pursuant to Iowa Admin. Code r. 871-24.35(2) and the protest shall be accepted as timely.

DECISION:

The January 2, 2019 (reference 02) unemployment insurance decision is reversed. The employer's protest shall be considered timely.

REMAND:

The separation from employment issue is remanded to the Benefits Bureau of IWD for a fact-finding interview and unemployment insurance decision, with notice and opportunity to be heard granted to both parties.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs