

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEVLIN N GUZMAN
Claimant

APPEAL 17A-UI-09349-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FORT MADISON HOUSING AUTHORITY
Employer

OC: 08/06/17
Claimant: Respondent (2R)

Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The employer filed an appeal from the September 8, 2017, (reference 03) unemployment insurance decision that found the protest untimely and allowed benefits. After due notice was issued, a hearing was held by telephone conference call on September 29, 2017. The claimant participated. The employer participated through Executive Director Pati Toops. Department's Exhibit D-1 and employer's Exhibit 1 were received into evidence.

ISSUE:

Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The claimant's notice of claim was mailed to employer's address of record on August 10, 2017, but was not received by employer within ten days. 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 August 21, 2017. The address on file is a valid address for the employer; however, the notice was not delivered to the employer by its postal office until August 28, 2017. The employer was unsure what the cause of the delay was and testified it could not make out the date of the postal mark on the envelope the notice came in. The employer filed its protest the following day, August 29, 2017. The claimant's separation from employment has not yet been the subject of a Benefits Bureau fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that employer has filed a timely protest response as 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). In this case, the employer did not receive the notice of claim until August 28, 2017, one week after the due date. The employer did not have an opportunity to protest the notice of claim because, for some unknown reason, the notice was not received in a timely fashion. Without timely notice of a claim, no meaningful opportunity to respond exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The employer filed the protest within one day of receipt of the notice of claim. Therefore, the protest shall be accepted as timely.

DECISION:

The September 8, 2017, (reference 03) unemployment insurance decision is reversed. The employer has 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.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs