

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SAMUEL KLEIN
Claimant

TJR TRANSFER LLC
Employer

APPEAL 22A-UI-00982-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/07/21
Claimant: Respondent (1)**

Iowa Code § 96.6(2) - Timeliness of Protest

STATEMENT OF THE CASE:

Employer, TJR Transfer, LLC, filed an appeal from the December 6, 2021 (reference 04) unemployment insurance decision that granted benefits to claimant, so long as he meets all other eligibility requirements due to finding employer's protest untimely as it was submitted 11/30/21, which is after the 11/29/21 deadline. The parties were properly notified of the hearing. A telephone hearing was held on February 1, 2022. Claimant, Samuel Klein, did not participate. Employer participated through Karen Arkfeld, co-owner. Official notice was taken of the administrative record.

ISSUE:

Whether employer filed a timely protest.

FINDINGS OF FACT:

Having heard the testimony and reviewed the evidence in the record, the undersigned finds:

The Notice of Claim was mailed to employer at its last known address on 11/15/2021. The Notice of Claim lists a due date of 11/29/2021 (due to holidays and weekends). Employer timely received the Notice of Claim.

Once received, the employer signed the Notice of Claim on November 18, 2021, and then put it in the mail when she got around to it. The appeal is postmarked November 30, 2021.

Employer's protest is stamped by Iowa Workforce Development as received LATE on December 3, 2021, and postmarked November 30, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that employer's protest was untimely.

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.

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 on 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.

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 Iowa Supreme 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 prior to the due date; but did not submit its protest to Iowa Workforce Development until after the due date. Employer provided no reason for the delay in submitting its protest, other than advising they mailed the protest when they got around to doing so. Employer's delay in submitting its protest was a result of its internal office procedures. The reason for employer's delay is not attributable to the agency or the United States Postal Service.

Employer's protest is untimely; therefore, the administrative law judge is without jurisdiction to entertain any appeal regarding the separation from employment.

DECISION:

The December 6, 2021 (reference 04) unemployment insurance decision is **AFFIRMED**. Employer's protest is untimely.



Darrin T. Hamilton
Administrative Law Judge

February 25, 2022
Decision Dated and Mailed

dh/mh