

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SIERRA ESSEX
Claimant

PORTILLOS HOT DOGS LLC
Employer

APPEAL 22A-UI-02789-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/16/21
Claimant: Respondent (2R)

Iowa Code § 96.6(2) - Timeliness of Protest

STATEMENT OF THE CASE:

The claimant, Sierra Essex, filed a timely appeal from the January 6, 2022, reference 02, decision that granted benefits and found the protest untimely. After due notice was issued, a hearing was held on February 24, 2022. The claimant did not participate. The employer participated through Leslie Ruttenberg. Exhibit D-1 and 1 were received into the record. Official notice was taken of the agency records.

ISSUE:

The issue is whether employer's protest is untimely.

FINDINGS OF FACT:

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

The claimant's notice of claim was mailed to the employer's address of record on May 20, 2021. The employer received the notice of claim on May 24, 2021. The notice of claim read in pertinent part, "Protest forms submitted to Iowa Workforce Development must be postmarked or faxed by the due date shown above." The due date written on the notice of claim was June 1, 2021. (Exhibit D-1) The copy from the fact-finding records has a stamp on it stating it was received on June 2, 2021.

Ms. Ruttenberg sent the employer's protest on June 1, 2021 at 10:44 a.m. The protest stated the claimant had voluntarily resigned from her position without good cause attributable to the employer. The employer provided the transmittal report that confirms it was sent at that time. (Exhibit 1)

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the employer filed a timely protest.

Iowa Code section 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 issuing the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. 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 section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 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 section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 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 issued, 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 section 96.8, subsection 5.

Iowa Admin. Code r. 871-24.8(2) provides:

Notifying employing units of claims filed, requests for wage and separation information, and decisions made.

24.8(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 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.

c. If the employing unit protests that the individual was not an employee and it is subsequently determined that the individual's name was changed, the employing unit shall be deemed to have not been properly notified and the employing unit shall again be provided the opportunity to respond to the notice of the filing of the initial claim.

d. The employing unit has the option of notifying the department under conditions which, in the opinion of the employing unit, may disqualify an individual from receiving benefits. The notification may be submitted electronically.

- (1) The Notice of Separation, Form 60-0154, **must be postmarked or received before** or within ten days of the date that the Notice of Claim, Form 65-5317, was mailed to the employer. In the event that the tenth day falls on Saturday, Sunday or holiday, the protest period is extended to the next working day of the department. If a claim for unemployment insurance benefits has not been filed, the Notice of Separation may be accepted at any time. [Emphasis added]

As Iowa Admin. Code r. 871-24.8(2)(d)(1) states there are two operable dates for the filing of a protest depending on the form. If the employer mails the protest, then the postmarked date counts as the date of filing. If the protest is sent electronically, then the date it is submitted is the date it is "received." The circumstances of this case fall within the ambiguity of what constitutes "received" under Iowa Admin. Code r. 871-24.8(2)(d)(1). The word "received" could mean the date in which the electronic correspondence was sent to the representative's facsimile or email address or it could mean when that representative acknowledged receipt and began processing the email or facsimile.

The administrative law judge has considered both readings and concludes that the former reading of "received" is the one contemplated by Iowa Admin. Code r. 871-24.8(2)(d)(1) for several reasons. The administrative law judge finds turning the determination of whether a protest was timely filed on the response by the agency to be disconnected with the purpose for the rule. The purpose of the rule is to encourage employers to alert Iowa Workforce Development of its response to the notice of claim as soon as possible. Whether the representative saw a facsimile transmission on the same day or ten days later has little bearing upon whether the employer is actively asserting its viewpoint regarding a notice of claim rather than sitting on its laurels. Indeed, the latter reading of "received" could encourage perverse incentives for Iowa Workforce Development staff to process emails after the protest period has run, to minimize their work. Furthermore, the former reading is more consistent with the common sense meaning of the word received. Finally, Iowa Workforce Development's notice of claim forms state that it must be faxed by the due date. Employers should be able to rely on the information displayed on the notice of claim.

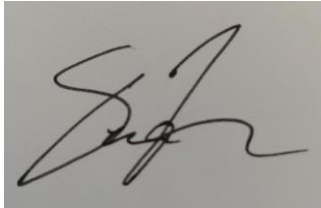
The employer electronically sent its protest on June 1, 2021. The employer's protest is timely.

DECISION:

The January 6, 2022, reference 02, decision is reversed. The employer has filed a timely protest.

REMAND:

The administrative law judge is remanding to the Benefits Bureau the issue regarding the claimant's separation from the employer with due process rights given to both parties.



Sean M. Nelson
Administrative Law Judge
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March 15, 2022
Decision Dated and Mailed

smn/mh