

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**TYLER J BRAINARD**  
Claimant

**APPEAL NO: 17A-UI-13097-TN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BODENSTEINER IMPLEMENT COMPANY**  
Employer

**OC: 11/26/17  
Claimant: Respondent (2R)**

Section 96.6(2) – Timeliness of Protest

**STATEMENT OF THE CASE:**

Bodensteiner Implement Company filed a timely appeal from the December 15, 2017, reference 01 unemployment insurance decision that allowed benefits to the claimant and found the employer's protest untimely. After due notice was provided, a telephone conference hearing was held on January 11, 2018. Claimant participated. The employer participated through Ms. Karla Baumler, Human Resource Manager. The administrative law judge took official notice of the claimant's administrative file.

**ISSUE:**

Whether the employer's protest on the claim of Tyler J. Brainard was timely, and if not, whether good cause exists for late filing of the protest.

**FINDINGS OF FACT:**

The findings of fact regarding the employer's protest in this matter are derived solely from the testimony of the employer's witness. The administrative law judge, having considered the evidence in the record finds: A notice of claim on the claim of Tyler J. Brainard was electronically sent to the employer's address of record on November 27, 2017 and received by the employer within the ten day protest period. The notice of claim contained a warning that in the protest must be returned by the employer to the agency by the due date set forth on the notice of claim. The due date set forth was December 7, 2017.

When the employer received the new electronic notice on the claim filed, the employer immediately attempted to file the company's protest electronically. Although the employer repeatedly attempted to file the protest electronically and believed that it was following the manner prescribed. The agencies system would not accept the employer's protest.

During the time that the employer was experiencing the inability to successfully transmit the protest, the employer also made numerous calls to Iowa Workforce Development (IWD) requesting assistance. The company's human resource manager testified that the only manner that the protest could be filed was by electronic submission. Although the employer requested more information and assistance, it was not available. Later, after making additional attempts,

the employer's protest was accepted by the agencies systems on December 13, 2017, after the ten day protest period had expired.

The issue of Tyler Brainard's job separation has not been investigated or adjudicated at the claims level.

**REASONING AND CONCLUSIONS OF LAW:**

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 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 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 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 section 96.8, subsection 5.

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.

Based upon the evidence in the record, the administrative law judge concludes that the employer has established by a preponderance of the evidence, that the company repeatedly attempted to electronically file their protest on the claim of Tyler Brainard within the time period prescribed by the Iowa Employment Security Law, but due to agency system issues that was beyond the employer's control, the employer was unable to successfully electronically protest the claim until December 13, 2017.

Although the employer was unable to successfully transmit their electronic protest in the manner prescribed by the agency, the employer's repeated attempts to protest the claim within the ten day statutory time period are sufficient evidence of the employer's intent to protest the charges to its account. Because the delay was not caused by the employer but appears to have been caused by technical issues, over which employer had no control, the employer's late protest is considered timely.

The issue of Tyler Brainard's job separation is remanded to the claims section of Iowa Workforce Development for initial investigation and determination.

**DECISION:**

The unemployment insurance representative's decision December 15, 2017, reference 01, is reversed. The employer's protest is considered timely. The claimant's job separation issue is remanded to the claims section of Iowa Workforce Development for an initial investigation and determination.

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Terry P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

tn/scn