

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEBORA PELAEZ
Claimant

PROSPERITY JANITORIAL LLC
Employer

APPEAL 19A-UI-09626-AD-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/10/19
Claimant: Respondent (1)

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

On December 5, 2019, Prosperity Janitorial LLC (employer/appellant) filed an appeal from the December 3, 2019 (reference 03) unemployment insurance decision that found employer's protest was untimely.

A telephone hearing was held on January 6, 2020, at 9 a.m. The parties were properly notified of the hearing. Debora Pelaez (claimant) did not register a number for the hearing and did not participate. Employer participated through owner Baltazar Leiva, via a Spanish language interpreter.

Department's Exhibit D1, employer's Statement of Protest, was admitted.

ISSUE:

Whether employer filed a timely protest.

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 November 15, 2019. 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 November 25, 2019. The address on file is a valid address for the employer. The employer filed its protest via fax on November 26, 2019. The claimant's separation from employment has not yet been the subject of a Benefits Bureau fact-finding interview.

The reason Leiva gave for the delay is that the Notice of Claim was sent to employer's home address rather than its business address. Leiva was on vacation from November 16 to November 23 and so was not home to attend to mail during that time. After Leiva returned from vacation, he did not check his mail until November 26. He sent in the Statement of Protest on that date. Leiva acknowledges the department has sent business-related mail to his home address before but he has not taken steps to change his address with the department.

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)(a) 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)

(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 ten calendar days to file a protest begins running on the mailing date. The mailing date found in the upper right-hand portion of the Notice of Claim is presumptive evidence of the date of mailing. The record in this case shows that more than ten calendar days elapsed between the mailing date and the date the protest was filed.

Due process principles apply in the context of appeal hearings for persons seeking unemployment benefits. *Silva v. Employment Appeal Board*, 547 N.W.2d 232 (Iowa App. 1996). Two of the hallmarks of due process are adequate notice and meaningful opportunity to be heard. The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert a protest in a timely fashion. *Hendren v. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

The reasons for employer's delay in submitting its protest were its failure to provide the best mailing address to the department and to timely check its mail. As noted above, employer has received business-related documents from the department at this address for several years. However, employer has not undertaken to update this address. Furthermore, based on these past documents going to its home address, employer knew it could receive business-related documents at the home address. Despite this knowledge, it failed to take steps to ensure any such mail would be timely opened and responded to in the event Leiva was out of town. Finally, Leiva delayed in checking his mail once he returned from vacation.

The reasons for delay are 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 3, 2019 (reference 03) unemployment insurance decision is affirmed. Employer's protest was untimely.

Andrew B. Duffelmeyer
Administrative Law Judge
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Decision Dated and Mailed

abd/scn