

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

IVANTI CONLEY
Claimant

**DIA APPEAL NO. 22IWDUI0057
IWD APPEAL NO. 21A-UI-20365**

**ELITE STAFFING
C/O PERSONNEL PLANNERS, INC.**
Employer

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/21/20
Claimant: Appellant (1)**

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed an appeal from the August 13, 2021 (reference 03) unemployment insurance decision that denied employer's protest regarding the claimant's separation from work on May 27, 2020 as it was not timely. The parties were properly notified of the hearing. A telephone hearing was held on December 2, 2021, at 10:00 a.m. The claimant, Ivanti Conley, did not appear. The employer, Elite Staffing, was represented by Joseph McDonnell of Personnel Planners, Inc., who presented testimony. Official Notice was taken of the administrative file, which included the Notice of Telephone Hearing, Amended Notice of Telephone Hearing, the decision at issue herein, and the appeal request. Additional documents were submitted as evidence and were admitted at hearing, including two Declarations of Power of Attorney, an IWD Tax Bureau Declaration of Power of Attorney, and a transmission verification report.

ISSUE:

Is the employer's protest timely?

FINDINGS OF FACT:

The record reflects that Elite Staffing, whose corporate office is at 1315 North Branch Street, Chicago, IL 60642, has two branch offices in the State of Iowa. One branch office is located in Creston, Iowa and is currently run by Heather Scarberry. The second branch, whose address was not provided at hearing, is currently run by Lisa Neris.

As far back as April 6, 2011, The Iowa Workforce Development Unemployment Insurance Division was notified that Personnel Planners, Inc. was granted Power of Attorney and was the representative for Elite Staffing Global, whose address was noted at the time to be 1400 W. Hubbard St., Suite 2, Chicago, IL 60642. (Fax transmittal). Joseph McDonnell, on behalf of Personnel Planners, Inc., provided two Declarations of Power of Attorney or Authorized Representative, documenting that arrangement. (Declaration).

During the month of June, 2020, Claimant Ivanti Conley worked for Elite Staffing at the branch office in Iowa that is currently run by Lisa Neris. Claimant worked for that branch office for seven days, with employment ending on June 8, 2020.

Pursuant to the Decision at issue herein, Claimant appears to have filed a claim for unemployment insurance benefits on or about January 12, 2021. Notice would have been sent out to the parties at that time, however the employer did not provide a copy of that notice for hearing. The undersigned does not know where the employer's notice was sent as it was not provided.

At some point, Employer was notified of that claim as someone from Employer submitted a protest. Joseph McDonnell stated Personnel Planners did not submit a protest on behalf of Employer as they had not been notified regarding the unemployment claim. He did not know who submitted the protest and did not have a copy of it. The Decision issued by Iowa Workforce Development (IWD) on August 13, 2021 reveals that the Employer's protest was received by the Department on February 3, 2021.

Specifically, the Decision made by IWD on August 13, 2021 denied the protest as untimely, stating the protest was postmarked, faxed or electronically submitted on February 3, 2021, which was more than ten days after January 12, 2021, the date the employer was sent a notice that a claim had been filed. The Decision was sent to Elite Staffing at 2133 S. California, Chicago, IL 60608. The Decision stated that it would become a final decision unless an appeal was postmarked by August 23, 2021, or received by the IWD appeals section by that date.

On September 14, 2021, well after the expiration of the appeal period, Cary Miller from Personnel Planners sent an email to Elite Staffing Global, stating they had received a determination on Conley Ivanti allowing unemployment benefits and asking if it was something they wanted to appeal. Miller also pointed out that an appeal was already late but the determination had been sent to an incorrect address. No documentation was provided as to how the notice was received by the employer or who received it.

Heather Scarberry of Elite Staffing responded to Miller's email on the same date, stating that this was not her employee. She copied Lisa Neris and multiple others at Elite Staffing on her reply. Miller responded, "ok, thanks" on September 15, 2021. No other responses were provided at hearing.

On September 15, 2021, David Prosnitz of Personnel Planners sent a letter to IWD, stating the employer never received a notice of claim and therefore could not respond. He indicated this was the first notice they had received for the claimant and the employer had no record of the claimant and wished to appeal the determination. The matter was transmitted to the Department of Inspections and Appeals to set a hearing on the timeliness of Employer's protest.

At hearing, Joseph McDonnell stated he requested information from Lisa Neris on November 17, 2021 regarding Claimant's employment with the employer as at that point he had determined the claimant had worked in Neris' branch office. He learned from Neris how long Claimant had worked there and when that employment ended. McDonnell provided no documentation regarding his correspondence with Neris at hearing.

It is noteworthy to mention that the Decision issued on August 13, 2021, as well as The first Notice of Telephone Hearing, sent on October 21, 2021 setting the hearing for November 24, 2021, and the Amended Notice of Hearing, sent on November 12, 2021, changing the hearing date to December 2, 2021, all went to the address at 2133 California Drive in Chicago, Illinois. Both hearing notices made their way to McDonnell prior to hearing. Personnel Planners submitted a witness list on November 22, 2021, listing the hearing date as November 24, 2021. Personnel Planners submitted a second witness list on November 29, 2021, listing the hearing

date as December 2, 2021. The employer received both Notices in a timely manner and forwarded those notices on to Personnel Planners. There is no indication any representative of Employer notified the Department at any time that the address being used for Employer was incorrect.

McDonnell testified at hearing that he had no idea where the California street address came from. He stated he received notices when they were sent to the branch office in Creston, Iowa, and Heather Scarberry forwarded them to Personnel Planners.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that employer has failed to file protest response within the time period prescribed by the Iowa Employment Security Law.

Iowa Code section 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.

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

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. Iowa Dep't. of Job Serv.*, 276 N.W.2d 373 (Iowa 1979).

The administrative law judge considers the reasoning and holding of that 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. Employer's failure to timely forward mail to Personnel Planners Inc. does not excuse the untimeliness.

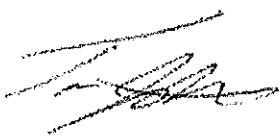
Someone at Employer clearly received the notice and clearly submitted a protest, whether or not Personnel Planners received it. IWD may have been given the California street address in conjunction with the protest, but as it was not provided to the undersigned, where that address information came from is not known. What is known is that on at least three occasions when that address was used, the employer received the document being sent. As noted, the employer had to have received notice of the claim at some point as they protested it. The employer has not provided evidence of when notice of the Claimant's claim was received, or for that matter when the Decision was received by the employer that would demonstrate that they were not timely received.

Other than the fact that Personnel Planners is an authorized representative for the Employer, there is no evidence that an invalid address was used for the employer or that the employer did not receive the notice of the claim in a timely manner. While Personnel Planners has the power of attorney and can act on behalf of Elite Staffing, it does not follow that service on the actual employer was not timely made absent evidence to the contrary. Furthermore, there is no indication the employer or its representative attempted at any time to correct the address being used by IWD prior to and including the date of hearing in this matter.

The undersigned does not find that the delay was due to any agency error or action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). No other good cause reason has been established for the delay. As the employer has failed to timely protest pursuant to Iowa Code section 96.6(2), the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the claimant's termination of employment. See, *Beardslee v. Iowa Dep't. of Job Serv.*, 276 N.W.2d 373 (Iowa 1979); *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979) and *Pepsi-Cola Bottling Co., v. Emp't Appeal Bd.*, 465 N.W.2d 674 (Iowa Ct. App. 1990).

DECISION:

The August 13, 2021 (reference 03) unemployment insurance decision is affirmed. The employer has failed to file a timely protest response, and the decision of the representative shall stand and remain in full force and effect.



Tricia A. Johnston
Administrative Law Judge

December 7, 2021
Decision Dated and Mailed

TAJ/

CC: Conley Ivanti, Claimant (by First Class Mail)
Elite Staffing c/o Personnel Planners, Employer (by First Class Mail)
Natali Atkinson, IWD (By Email)
Joni Benson, IWD (By AEDMS)

Case Title: CONLEY V. ELITE STAFFING

Case Number: 22IWDUI0057

Type: Proposed Decision

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'Tricia Johnston', is positioned above a horizontal line.

Tricia Johnston, Administrative Law Judge