

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STEPHANIE GANAWAY**

Claimant

**APPEAL NO. 19A-UI-07422-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SEARS MANUFACTURING CO**

Employer

**OC: 08/11/19**

**Claimant: Respondent (2/R)**

Iowa Code Section 96.6-2 - Timeliness of Protest

Iowa Administrative Code Rule 871-24.8(2)(c) – Notice of Claim After Claimant Name Change

**STATEMENT OF THE CASE:**

The employer filed an appeal from the September 9, 2019, reference 03, decision that allowed benefits to the claimant provided she was otherwise eligible, that held the employer's account could be charged for benefits, and that held the employer's protest could not be considered because it was untimely. After due notice was issued, a hearing was held by telephone conference call on October 10, 2019. Claimant Stephanie Ganaway participated. Diana Perry-Lehr of Employers Unity represented the employer and presented testimony through Katie Berry. Exhibits 1, 2 and 4 and Department Exhibits D-1 through D-5 were received into evidence.

**ISSUE:**

Whether the employer's protest of the claim for benefits was timely.

Whether there is good cause to deem the employer's late protest as timely.

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: The employer's representative of record is Employers Unity. The employer has elected to receive electronic notice of claims. On August 12, 2019, Iowa Workforce Development generated a notice of claim regarding claimant Stephanie Ganaway. On August 13, 2019, Iowa Workforce Development sent an email to the employer's email address of record to notify the employer of the notice of claim that had been posted to the employer's SIDES account. The notice of claim provided August 23, 2019 as the deadline for the employer's protest of the claim. The employer received the notice in a timely manner. The employer had no record of a Stephanie Ganaway having worked for the employer. The claimant name Iowa Workforce Development had provided to the employer was the claimant's married name. The claimant had worked for the employer under a different last name, Heard. On August 23, 2019, the employer filed an electronic protest. The employer attached a letter stating that the employer had no record of the claimant. On August 27, 2019, Iowa Workforce Development electronically transmitted to the employer a Return of Notice of Claim that provided the claimant's name as Stephanie Heard-Ganaway. The Return of Notice of Claim also provided the employer with a statement of the

base period wages the employer had reported to Iowa Workforce Development as wages the employer paid to the claimant. The Return of Notice of Claim provided the original protest deadline of August 23, 2019 as the deadline for the employer's response to the Return of Notice of Claim. Upon receipt of the Return of Notice of Claim that provided the last name under which the claimant had worked for the employer, the employer was able to find a record for the claimant. On September 4, 2019, the employer electronically filed a protest/response to the August 27, 2019 Return of Notice of Claim. The employer's response provided the dates of employment and included an assertion that the claimant had voluntarily quit to accept other employment.

## **REASONING AND CONCLUSIONS OF 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.

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 court 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.

Iowa Administrative Code Rule 871-24.8(2)(a), (b) and (c) provide as follows:

- (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 a 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.

Iowa Administrative Code Rule 871-24.35(1) provides:

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

(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 of 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 those outlined in paragraphs 24.35(1)"a" and "b", on the date it is received by the division.

Iowa Administrative Code Rule 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.

The evidence in the record establishes a timely protest. The notice of claim that Iowa Workforce Development initially transmitted to the employer contained a different name for the claimant than the name the claimant had used when working for the employer. The claimant had married and changed her name subsequent to separating from the employer. The employer provided a timely response to the initial notice of claim through the August 23, 2019 filing in which the employer asserted that a claimant by the name of Stephanie Ganaway had not worked for the employer. On August 27, 2019, Iowa Workforce Development provided the employer with the last name under which the claimant had worked for the employer. Under

Iowa Administrative Code Rule 871-24.8(2)(c) the initial notice of claim did not constitute proper notice to the employer. On September 4, 2019, the employer filed a timely protest in response to the August 27, 2019 Return of Notice of Claim. The response was filed within 10 days of the August 27, 2019 Return of Notice of claim.

Based on the employer's timely protest, this matter will be remanded to the Benefits Bureau for a fact-finding interview to adjudicate the claimant's eligibility for benefits and the employer's liability for benefits based on the claimant's separation from the employer.

**DECISION:**

The September 9, 2019, reference 03, decision is reversed. The employer's protest was timely. This matter is remanded to the Benefits Bureau for a fact-finding interview to adjudicate the claimant's eligibility for benefits and the employer's liability for benefits based on the claimant's separation from the employer.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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