

IN THE COURT OF APPEALS OF IOWA

No. 6-1003 / 05-0898
Filed February 28, 2007

BJORKLUND LAW FIRM, L.L.C.,
Plaintiff-Appellant,

vs.

**IOWA WORKFORCE DEVELOPMENT
AND RAYMOND M. TINNIAN,**
Defendants-Appellees.

Appeal from the Iowa District Court for Johnson County, Denver Dillard
and Patrick Grady, Judges.

A law firm seeks further judicial review of an agency decision concluding
the law firm's response to an unemployment compensation claim was untimely.

AFFIRMED.

Dennis A. Bjorklund of Bjorklund Law Firm, L.L.C., Coralville, for appellant.

Anita M. Garrison, Employment Appeal Board, Des Moines, for appellees.

Raymond Tinnian, Kalona, pro se.

Considered by Mahan, P.J., and Miller and Vaitheswaran, JJ.

VAITHESWARAN, J.

A law firm seeks further judicial review of an agency decision concluding the law firm's response to an unemployment compensation claim was untimely. We affirm.

I. Background Facts and Proceedings

An attorney sought unemployment compensation following his separation from the Bjorklund Law Firm. On January 27, 2004, the Department of Workforce Development (Department) mailed the firm a notice informing it of the claim and advising the firm that it had until February 6, 2004 to respond. The notice stated the response needed to be "faxed or postmarked" by that date. On April 6, 2004, the Department issued a decision approving the unemployment compensation claim. The letter also stated

The employer's protest regarding the claimant's separation from work on 01/04/04, cannot be accepted because it was not timely. Our records indicate the protest was postmarked on 03/31/04. This was not within ten (10) days of 01/27/04, when the employer was mailed a notice that a claim had been filed.

Bjorklund appealed this decision. The notice of appeal raised no challenge to that portion of the decision finding the protest untimely. The Department scheduled the matter for hearing, listing a single issue for adjudication: whether the protest was timely.¹ Two days before the hearing, Bjorklund requested a postponement of the hearing due to the press of court

¹ An original notice of hearing listed five issues for consideration. That notice was later amended. The amended notice was mailed to the law firm well before the deadline prescribed by statute. See Iowa Code § 96.6(3) (stating hearing not to be scheduled "before the seventh calendar day after the parties receive notice of the hearing.").

matters. The Department denied the request and proceeded with a hearing on the scheduled date. Nobody appeared on behalf of the firm.

Following the hearing, the administrative law judge issued a decision determining that the protest was not timely. The judge found, "The employer did not effect a protest until March 31, 2004, which is after the ten-day period had expired."²

The firm appealed the administrative law judge's decision to the Employment Appeal Board. With respect to the timeliness of the protest, the notice of appeal stated only, "Employer asserts the objection to the timeliness of the protest was within the prescribed time limit." The firm subsequently filed an appeal brief, attaching documents purporting to verify that the firm's response/protest to the notice of claim was filed before February 6, 2004. The documents were (1) Bjorkland's response to a Department letter dated March 29, 2004, and (2) a completed protest form containing a handwritten notation that it was "mailed 1/30/04." A majority of the Employment Appeal Board found that "the administrative law judge's decision is correct." The firm requested rehearing which was denied, with one member dissenting.

The law firm sought judicial review. On the question of the timeliness of the protest, the district court ruled as follows:

Petitioner clearly failed to comply with the provisions of Iowa Code § 96.6(2) because its protest was not filed within ten days of the notice of claim being provided to Petitioner. Regardless of Petitioner's claim that a timely protest was sent to IWD, Petitioner has not offered any documentation to prove its claim; nor is

² The administrative law judge also noted that the "request for a postponement was denied as it was not made at least three days prior to a hearing as required by 871 IAC 26.8(2)."

Respondent aware of any proof that the protest was mailed by the deadline set pursuant to Iowa Code § 96.6(2). There is no evidence that the Administrative Law Judge and Employment Appeal Board acted in an unreasonable, arbitrary or capricious manner, or in any way abused their discretion in finding Petitioner's protest was not timely filed, and the findings of the Administrative Law Judge and the Employment Appeal Board should be upheld on review.

The law firm sought reconsideration of the ruling. Attached to the reconsideration motion was a Department letter dated March 29, 2004, acknowledging receipt of a response to the notice of claim. The letter made no mention of when the response was received. The letter reiterated, however, that "[a]ny protest on the enclosed NOTICE OF CLAIM must be postmarked no later than 02-06-04 to be considered timely." The letter concluded, "This individual was properly listed on your QUARTERLY PAYROLL REPORT(S) to this Division. For the reason stated, no extension of time for protesting this claim can be granted." The district court denied the motion to reconsider and this appeal followed.

II. Standards of Review

Our review of the district court's decision requires application of the standards of Iowa Code section 17A.19(10) (2005) to determine whether our conclusions are the same as those of the district court. *P.D.S.I. v. Peterson*, 685 N.W.2d 627, 632 (Iowa 2004). The law firm argues "Bjorklund did file a timely protest." This argument implicates the substantial evidence standard of review. Iowa Code § 17A.19(10)(f). That standard requires us to review "the agency record for judicial review, as defined by this chapter, supplemented by any

additional evidence received by the court under the provisions of this chapter.”
Iowa Code § 17A.19(10)(f)(2).

III. Timeliness of Protest

Iowa Code section 96.6(2) (2003) allows “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 agency’s certified record contains a copy of the January 27, 2004 notice mailed to the Bjorklund Law Firm. The certified record also contains a copy of the law firm’s response/protest to this notice with the handwritten notation that it was “mailed 1/30/94.” This response was not offered or admitted at the hearing before the administrative law judge but was attached to a brief filed by the law firm with the Employment Appeal Board. Upon receipt of the brief, the Employment Appeal Board did not “direct the taking of additional evidence.” See Iowa Code § 10A.601(4); see also Iowa Admin. Code r. 486-3.3(1)(10A). Additionally, its decisions make no reference to the attached documents. Similarly, the district court did not order the taking of additional evidence by the agency. See Iowa Code § 17A.19(7). Therefore, the documents on which the law firm relies to contest the agency’s decision that its response/protest was untimely are not properly part of our record for review. For that reason, we decline to consider them.

Based on the record properly before us, we determine there is substantial evidence to support the agency fact finding that “[t]he employer did not effect a protest until March 31, 2004, which is after the ten-day period had expired.”

IV. Good Cause for Postponement of Hearing

The law firm also asserts that the agency should have granted its request for a postponement of the hearing. There is no question that the request was not timely. 871 Iowa Admin. Code *r.* 26.8(2). Accordingly, we agree with the district court that the agency's denial of the request should be affirmed.

In light of our disposition, we find it unnecessary to consider the law firm's remaining arguments.

AFFIRMED.