

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

<b>JOSHUA L BEEGLE</b> Claimant  <b>BEHLE INC</b> <b>ROTO-ROOTER SEWER-DRAIN SERVICE</b> Employer	<div>68-0157 (9-06) - 3091078 - EI</div> <div><b>APPEAL NO. 17A-UI-13227-JTT</b>  <b>ADMINISTRATIVE LAW JUDGE DECISION</b></div> <div><b>OC: 11/19/17</b> <b>Claimant: Respondent (1)</b></div>
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Iowa Code section 96.6-2 - Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the December 18, 2017, reference 01, decision that allowed benefits to the claimant provided he 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, an appeal hearing was held on January 9, 2018. Claimant Joshua Beegle did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. Teri Jensen represented the employer and presented additional testimony through Randy Behle. Exhibits 1 and 2 and Department Exhibit D-1 were received into evidence. The administrative law judge took official notice of the Agency's administrative record (WAGEA) of wages paid to the claimant subsequent to his separation from this employer and prior to the November 19, 2017 original claim for benefits.

The administrative law judge has taken steps to correct the spelling of the claimant's last name in the Agency's records. The employer corrected the claimant's last name from Beegle to Beegle when the employer submitted its protest. The administrative law judge confirmed the last name of Beegle by comparing Iowa Workforce Development records with an Iowa Judicial Branch record available to the public at [www.iowacourts.state.ia.us](http://www.iowacourts.state.ia.us). The administrative law judge thanks the employer for bringing the name spelling error to the attention of Iowa Workforce Development.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: Randy Behle owns and operates Behle, Inc., d/b/a Roto-Rooter Sewer Drain Service. On November 22, 2017, Iowa Workforce Development mailed a notice of claim concerning claimant Joshua Beegle to the employer's address of record. The employer's address of record is a United States Postal Service post office box located at a satellite post office in Ames. The notice of claim form provided a due date for the employer's response to the notice of claim, which due

date was December 4, 2017. The notice of claim form included the following statement: "Protest forms submitted to Iowa Workforce Development must be postmarked or faxed by the due date shown above." The employer's office was closed on November 22, 2017, which was the Wednesday before the Thanksgiving holiday. The employer's office reopened on Monday, November 27, 2017. On that day, Teri Jensen, Office Manager, collected the employer's mail, including the notice of claim correspondence, from the post office box. On November 28, 2017, Ms. Jensen reviewed the notice of claim form, but did not note the December 4, 2017 due date for the employer's response. Ms. Jensen then set the notice of claim aside.

On Friday, December 1, 2017, Ms. Jensen returned her attention to the notice of claim form. On that day, Ms. Jensen attempted to locate the employer's record concerning Mr. Beegle's employment, but could not locate the file. The notice of claim subsequently ended up under other employer documents.

On December 7, 2017, Ms. Jensen returned her attention to the notice of claim and located the employer's record of Mr. Beegle's employment. On the morning of December 8, 2017, Ms. Beegle wrote the employer's protest information on the notice of claim form. Ms. Jensen indicated on the notice of claim form that Mr. Beegle had voluntarily quit on March 27, 2017. Ms. Jensen signed the certification section of the form to certify the accuracy of the employer information on the form and dated the certification signature December 4, 2017. Ms. Jensen left blank the remarks section of the form and the section of the form that solicited information regarding who would represent the employer at a fact-finding interview. On December 8, 2017, Ms. Jensen faxed the notice of claim form to the appropriate fax number at Iowa Workforce Development. On December 8, 2017, the Unemployment Insurance Service Center received the employer's faxed protest.

## **REASONING AND CONCLUSIONS OF LAW:**

Iowa Admin. Code r. 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 by any means other than the United States postal service on the date it is received by the division.

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.

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.

The evidence in the record establishes an untimely protest. The evidence in the record establishes that the employer had a reasonable opportunity to file the protest by the December 4, 2017 protest deadline, but failed to file the protest until after the deadline had passed. The employer had 12 days from the mailing date of the notice of claim to file a timely protest in response to the notice of claim. This is because the 10th day from the mailing date was a Saturday and, therefore, the protest due date was extended by operation of law to the next working day, Monday, December 4, 2017. Once Ms. Jensen collected the notice of claim from the employer's post office box on Monday, November 27, the employer still had another full week in which to file a timely protest by the extended protest deadline. The evidence establishes that the employer waited until after the protest deadline had passed to take meaningful action in response to the notice of claim. Three days after the due date had passed, Ms. Jensen returned to the matter after having twice set it aside for extended periods. Four days after the due date had passed, Ms. Jensen put the employer's protest information on the form and backdated her signature to December 4. On December 8, 2017, Ms. Jensen finally transmitted the employer's late protest to Iowa Workforce Development and the Agency received the protest. The evidence establishes that the employer's failure to file a timely protest was attributable to the employer's internal operations. The late filing of the protest was not

attributable to Iowa Workforce Development error or misinformation or delay or other action of the United States Postal Service. Accordingly, there is not good cause under the law to treat the employer's late protest as a timely protest. See Iowa Administrative Code rule 871-24.35(2). Because the employer's protest was untimely, the administrative law judge lacks jurisdiction to disturb the Agency's initial determination regarding the nature of the claimant's separation from the employment, the claimant's eligibility for benefits, or the employer's liability for benefits. The Agency's initial determination of the claimant's eligibility for benefits and the employer's liability for benefits shall remain in effect.

**DECISION:**

The December 18, 2017, reference 01, decision is affirmed. The employer's protest was untimely. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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