

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DEANNA R REED**

Claimant

**APPEAL NO. 15A-UI-08765-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LA GUADALAJARA RESTAURANT LLC**

Employer

**OC: 07/12/15**

**Claimant: Respondent (1)**

Iowa Code § 96.6-2 - Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the July 31, 2015, reference 06, 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 August 25, 2015. Claimant Deanna Reed did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Guadalupe Vazquez represented the employer and presented additional testimony through Adrianna Castanada. Exhibit One and Department Exhibit D-1 were received into evidence. The administrative law judge took official notice of the Agency's administrative record of wages reported for the claimant (WAGEA), which record indicates that the claimant was paid ten times her weekly benefit amount from insured work subsequent to her separation from the employer and prior to establishing her claim for benefits.

**ISSUE:**

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: On July 14, 2015, Iowa Workforce Development mailed a notice of claim concerning the above claimant to the employer's address of record. The notice of claim contained a warning that any protest must be postmarked, faxed or returned by the due date set forth on the notice, which was July 14, 2015. The notice of claim was received at the employer's address of record in a timely manner, on July 16, 2015. On that day, Guadalupe Vazquez, Owner, signed and dated the notice of claim to certify the accuracy of the information provided on the document, even though no other information had been placed on the document at that time. Ms. Vazquez, then left the notice of claim for Adrianna Castanada, Secretary, to complete and return to Iowa Workforce Development. Ms. Castanada did not see the notice of claim or follow up on the matter until July 28, 2015. On that day, Ms. Castanada entered the separation information at paragraph three of the notice of claim and the wage information at paragraph 10. Later that morning, Ms. Castanada then faxed the notice of claim for to Workforce Development. The

Unemployment Insurance Service Center received the protest on July 28, 2015 and marked it as a late protest.

The claimant has worked in and been paid wages equal to ten times her weekly benefit amount subsequent to separating from this employer and prior to establishing her claim for benefits.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Admin. Code r. 871-24.35(1) 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 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:

(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 department that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service or its successor.

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 department 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 department error or misinformation or delay or other action of the United States postal service or its successor, the department shall issue an appealable decision to the interested party.

Iowa Code § 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 § 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 that the employer's protest was untimely. The employer received the notice of claim in a timely manner on July 16, 2015 and had a reasonable opportunity to file a protest by the July 24, 2015 deadline. For reasons internal to the employer's operations, the employer did not file the protest until July 28, 2015. The employer's protest was deemed filed at the time the Unemployment Insurance Service Center received the faxed protest on July 28, 2015. The employer's failure to file a timely protest was not attributable to Workforce Development error or misinformation or delay or other action of the United States Postal Service. Accordingly, there is not good cause to treat the late protest as a timely protest. Because the protest was untimely, the employer has failed to preserve its right to challenge its liability on the claim or the claimant's eligibility for benefits. Because the 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 July 31, 2015, reference 06, decision is affirmed. The employer's protest was untimely. The claimant is eligible for benefits, provided she 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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