

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ANN M WIESE
Claimant

AZULE STAFFING LLC
Employer

APPEAL 17A-UI-01319-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/18/16
Claimant: Respondent (1)

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 24, 2017, (reference 02) unemployment insurance decision that allowed benefits and found the protest untimely without having held a fact-finding interview pursuant to Iowa Admin. Code r. 871-24.9(2)b. After due notice was issued, a hearing was conducted by telephone conference call on February 27, 2017. The claimant participated personally. The employer participated through Dara Yang, Risk Manager. Department's Exhibit D-1 was received. The administrative law judge took official notice of the administrative record, including the Notice of Claim and protest.

ISSUES:

Is the employer's protest timely?

Has the claimant requalified for benefits since the separation from this employer?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The notice of claim was mailed to the employer's address of record on December 20, 2016, and was received December 22, 2016, within the protest period. The administrative law judge would note the incorrect suite number was used in the address, as it should reflect "suite 208" and not "suite 2" but that the employer still received the notice of claim with over a week to respond. The notice of claim contained a warning that the employer protest response was due ten days from the initial notice date and gave a response deadline of December 30, 2016.

The employer did not file a protest response until January 10, 2017, which is after the ten-day period had expired because the employer was unable to obtain details about the claimant's final assignment. As a staffing company, the employer works with other companies and employees such as the claimant, then worked on assignment. Because the claimant worked off site, at an assignment, Ms. Yang acknowledged she was unable to furnish details until she made contact with individuals with knowledge of the claimant's assignment and separation. Ms. Yang also asserted the holidays contributed to the delay in hearing back about inquiries she made within the employer and job assignment. No attempts were made to submit the protest to the notice of claim before January 10, 2017.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that employer has failed to protest response within the time period prescribed by the Iowa Employment Security Law.

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.

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 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. The employer has not shown any good cause for not complying with the jurisdictional time limit. Therefore, the administrative law judge is without jurisdiction to entertain any appeal regarding the separation from employment.

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.

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.

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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 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.

In this case, in light of an incomplete suite number being listed as the mailing address, the employer received the notice of claim on December 22, 2016, two days after it was mailed, and within the period prescribed to respond. The employer, through Dara Yang, then experienced difficulty locating the correct "contact" person who had details about the claimant's separation from the final assignment. The employer made no attempts to file an appeal until it mailed its notice of claim in on January 10, 2017 (Department Exhibit D-1). Pursuant to rule Iowa Admin. Code r. 871-24.35(1), appeals are considered filed when postmarked, if mailed. *Messina v. Iowa Dep't of Job Serv.*, 341 N.W.2d 52 (Iowa 1983). The postage meter mark on the last day for filing does not perfect a timely appeal if the postmark affixed by the United States Postal Service is beyond the filing date. *Pepsi-Cola Bottling Co. of Cedar Rapids v. Emp't Appeal Bd.*, 465 N.W.2d 674 (Iowa Ct. App. 1990).

Based on the evidence presented, the employer has not shown any good cause for failure to comply with the jurisdictional time limit or that the delay was due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). Therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the claimant's separation from employment or authority to remand for a fact-finding interview. Iowa Code § 96.6(2). (The issue of separation will not be addressed in a future fact-finding, decision or hearing.)

DECISION:

The January 24, 2017, (reference 02) unemployment insurance decision is affirmed. The employer has failed to file a timely protest response, and the unemployment insurance decision shall stand and remain in full force and effect.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/rvs

NOTE TO EMPLOYER:

If you wish to change the street name of record, please access your account at:

<https://www.myiowauui.org/UITIPTaxWeb/>.

Helpful information about using this site may be found at:

<http://www.iowaworkforce.org/ui/uiemployers.htm> and

<http://www.youtube.com/watch?v= mpCM8FGQoY>