

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DONALD G FLEMING**  
Claimant

**APPEAL NO. 17A-UI-08125-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ENGINEERED SEAL PRODUCTS INC**  
Employer

**OC: 07/09/17**  
**Claimant: Respondent (2R)**

Iowa Code section 96.6-2 - Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer filed an appeal from the July 31, 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, a hearing was held by telephone conference call on August 28, 2017. Claimant Donald Fleming participated. Becky Streff represented the employer and presented additional testimony through Heather Cody. Exhibit 1 and Department Exhibits D-1 and D-2 were received into evidence.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: The employer has elected to receive electronic notice of unemployment insurance claims. The employer has designated Heather Cody, Human Resources Manager, as the person to whom Iowa Workforce Development should direct email notice of claims. The employer provided Ms. Cody's work email address for that purpose. Ms. Cody has created a personal identification number or PIN for the employer to use when accessing the State Information Data Exchange System.(SIDES) to respond to notice of claims.

On the evening of July 13, 2017, Iowa Workforce Development transmitted notice to the employer concerning an unemployment insurance claim established by Donald Fleming. Ms. Cody saw the emailed notice when she arrived for work on the morning of July 14, 2017. The emailed notice indicated that the employer's protest in response to the notice of claim must be received by July 24, 2017. On July 14, 2017, Ms. Cody was getting ready to leave for a vacation in Norway. Ms. Cody forwarded the email notice of the claim to Becky Streff, Director of Organizational Effectiveness, so that Ms. Streff could respond to the notice of claim during Ms. Cody's absence from the workplace. Ms. Streff understood that the protest was due on July 24, 2017. Ms. Streff was unfamiliar with SIDES. On July 15, Ms. Cody left on vacation without providing Ms. Streff with guidance concerning SIDES or the PIN that Ms. Streff needed to access SIDES. Ms. Cody had been under the erroneous belief that Ms. Streff would need to create a separate PIN for the purpose of accessing SIDES on behalf of the employer.

Ms. Streff first turned her attention to the matter on Thursday, July 20, 2017. On Friday, July 21, Ms. Streff checked company resources to see whether she could locate the SIDES PIN. On July 21 or 22, Ms. Streff sent an email message to [IWD-SIDESINFO@iwd.iowa.gov](mailto:IWD-SIDESINFO@iwd.iowa.gov) requesting assistance in accessing SIDES. Ms. Streff did not receive a response to her email message. On the morning of Monday, July 24, Ms. Streff contacted Iowa Workforce Development multiple times to request assistance in accessing SIDES. On the morning of Tuesday, July 25, Ms. Streff received from Iowa Workforce Development the information she needed to access the SIDES system. On the afternoon of July 25, Ms. Streff transmitted the employer's protest to Iowa Workforce Development via SIDES. Workforce Development received the protest on July 25, 2017, as indicated by the Broker Record Effective Date.

## **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 or otherwise transmitted to the employer.

The evidence in the record establishes good cause to treat the late protest as a timely protest because Iowa Workforce Development contributed to the protest being late by not responding to the employer's timely request for assistance with accessing SIDES until the day after the protest deadline. Contrary to Mr. Fleming's assertions, the employer did not wait until the day the protest was due to take action on the matter. This matter is remanded to the Benefits Bureau for a fact-finding interview to adjudicate the claimant's eligibility for benefits and the employer liability for benefits based on the separation from the employment. Depending on the adjudication of those issues, the Benefits Bureau may also need to address whether Mr. Fleming has been overpaid unemployment insurance benefits.

**DECISION:**

The July 31, 2017, reference 01, decision is reversed. There is good cause to treat the employer's protest as 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 liability for benefits based on the separation from the employment. Depending on the adjudication of those issues, the Benefits Bureau may also need to address whether the claimant has been overpaid unemployment insurance benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs