

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

**AMY L FOLKERS
1907 HIGHVIEW DR
DES MOINES IA 50315-4938**

**EMBRACE LIFE CHIROPRACTIC LLC
DR. DREW CORPSTEIN
STE 280
2732 SE DELAWARE AVE
ANKENY IA 50021**

APPEAL NO. 22A-UI-00143-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

APPEAL RIGHTS:

This Decision Shall Become Final, unless within fifteen (15) days from the date below the administrative law judge's signature on the final page of this decision, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to:

***Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
OR
Fax Number: (515)281-7191***

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

The name, address and social security number of the claimant.

A reference to the decision from which the appeal is taken.

That an appeal from such decision is being made and such appeal is signed.

The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

ONLINE RESOURCES:

UI law and administrative rules:

<https://www.iowaworkforcedevelopment.gov/unemployment-insurance-law-and-administrative-rules>

UI Benefits Handbook:

<https://www.iowaworkforcedevelopment.gov/unemployment-insurance-claimant-handbook>

Employer UI Handbook: <https://www.iowaworkforcedevelopment.gov/employer-handbook>

Report UI fraud: <https://www.iowaworkforcedevelopment.gov/report-fraud>

Employer account access and information: <https://www.myiowaui.org/UITIPTaxWeb/>

National Career Readiness Certificate and Skilled Iowa Initiative: <http://skillediowa.org/>

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

AMY L FOLKERS

Claimant

APPEAL NO. 22A-UI-00143-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EMBRACE LIFE CHIROPRACTIC LLC

Employer

OC: 03/29/20

Claimant: Respondent (5)

Iowa Code Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 8, 2021, reference 03, 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 January 21, 2022. Claimant, Amy Folkers, did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Dr. Drew Corpstein, D.C., represented the employer. Exhibit A was received into evidence. The administrative law judge took official notice of the notice of claim form received and processed by Iowa Workforce Development.

ISSUE:

Whether the employer's protest of the claim for benefits was timely.

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 March 16, 2021, Iowa Workforce Development mailed a notice of claim concerning the above claimant to the employer's address of record. The employer's address of record is a business suite located within a building that houses multiple separate businesses. When Iowa Workforce Development mailed the notice of claim, the Agency omitted the suite number, but otherwise indicated the correct address of record. The employer's business has been in the same location for 6.5 years. The employer's mail is delivered to a United States Postal Service Cluster Box Unit (CBU), otherwise known as a community mailbox, a centralized unit of individually locked compartments for the delivery and collection of mail. The CBU is located outside the building that houses the employer's business. The employer's name is on the inside of the employer's individual mailbox to assist the postal carrier in getting mail to the correct mailbox. Despite omission of the suite number on the notice of claim form, the notice of claim was delivered to the employer's mailbox in a timely manner prior to deadline for appeal. The notice of claim stated that the response/protest must be postmarked or faxed by the due date set forth on the notice, which was March 26, 2021.

On March 24, 2021, Ariann Corpstein, co-owner and Office Manager, completed the employer's protest information on the notice of claim form and signed to certify the accuracy of the information provided on the form. Ms. Corpstein did not immediately transmit the form back to Iowa Workforce Development. Before the employer mailed the document to Iowa Workforce Development, Ms. Corpstein added the following comment: "My mother passed away. This form may be postmarked late; however I placed it in my mailbox on the day it was due. Please give me grace during this difficult time." Ms. Corpstein's mother had passed away in February 2021. Dr. Drew Corpstein advises he is the person who placed the correspondence in the CBU/community mailbox, but concedes he may have done so after the postal carrier had delivered and collected mail for the day. Dr. Corpstein concedes he perhaps should have taken the correspondence to the post office so that it could be postmarked on March 26, 2021. Dr. Corpstein the business complex does not receive postal service of the weekend. The weight of the evidence indicates the postal carrier collected the correspondence from the CBU/community mailbox on Monday, March 29, 2021. The correspondence was postmarked March 29, 2021.

REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Administrative Code Rule 871-24.8(2)(a) and (b) provide as follows:

- (2) Responding by employing units to a notice of the filing of an initial claim or a request for wage and separation information and protesting the payment of benefits.
 - a. The employing unit which receives a Form 65-5317, Notice of Claim, or a Form 68-0221, Request for Wage and Separation Information, must, within ten days of the date of the notice or request, submit to the department wage or separation information that affects the individual's rights to benefits, including any facts which disclose that the individual separated from employment voluntarily and without good cause attributable to the employer or was discharged for misconduct in connection with employment.
 - b. The employing unit may protest the payment of benefits if the protest is postmarked within ten days of the date of the notice of the filing of an initial claim. In the event that the tenth day falls on a Saturday, Sunday or holiday, the protest period is extended to the next working day of the department. If the employing unit has filed a timely report of

facts that might adversely affect the individual's benefit rights, the report shall be considered as a protest to the payment of benefits.

Iowa Administrative Code Rule 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 via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

c. If transmitted by any means other than those outlined in paragraphs 24.35(1)"a" and "b", on the date it is received by the division.

Iowa Administrative Code Rule 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.

The employer's protest was untimely. The mailed protest was filed on March 29, 2021, the postmark date. Despite omission of the suite number, the notice of claim was delivered to the employer's address of record in a timely manner, as indicated by the employer's March 24, 2021 certification signature date. The employer had a reasonable opportunity to file protest by the March 26, 2021 protest deadline. The passing of Ms. Corpstein's mother in February 2021

did not deny the employer a reasonable opportunity to file a timely protest in response to a notice of claim mailed on March 16, 2021 with a March 26, 2021 protest deadline. The weight of the evidence indicates the employer placed the correspondence in the CBU/community mailbox's outgoing mail slot on March 26, 2021, but did so after the postal carrier had serviced the CBU/community mailbox for the day. The employer's actions caused the correspondence to be postmarked on March 29, 2021, rather than by the March 26, 2021 protest deadline. The employer elected not to take the correspondence to the post office so that the correspondence could be postmarked March 26, 2021. The employer also elected not to fax the material, though a faxed protest would have been timely if Iowa Workforce Development had received it by 11:59 p.m. on March 26, 2021. Because 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, there is not good cause to treat the late protest as a timely protest. 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, and 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 November 8, 2021, reference 03, decision is modified only to correct relevant dates set for on the decision. The employer's protest was untimely. The protested was filed on March 29, 2021, the postmark date, and was not filed within 10 days of the March 16, 2021 notice of claim mailing date. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.



James E. Timberland
Administrative Law Judge

February 10, 2022
Decision Dated and Mailed

jet/mh