

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAULA J CLATT

Claimant

APPEAL NO. 12A-UI-04117-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

YOUTH & SHELTER SERVICES INC

Employer

OC: 09/25/11

Claimant: Respondent (4)

Section 96.7-2-a-6 – Employer Not Notified of Claim

Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 13, 2012, reference 06, decision that allowed benefits and that found the employer's protest untimely. After due notice was issued, a hearing was held by telephone conference call on May 4, 2012. Claimant Paula Clatt participated. Cheryl Baker, Human Resources Manager, represented the employer. Exhibit One and Department Exhibit D-1 was received into evidence. The administrative law judge took official notice of the Agency's administrative record of wages reported for the claimant, which record indicates that the claimant earned at least 10 times her weekly benefit amount from insured work between the time she separated from the employment and the time she filed her claim for unemployment insurance benefits.

ISSUE:

Whether the employer's protest was timely.

FINDINGS OF FACT:

On September 29, 2011, 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 October 11, 2011. The employer did not receive the Notice of Claim. The employer first received notice of the claim for benefits when it received the quarterly Statement of Charges that the Agency mailed to the employer's new address of record in early April 2012. On April 12, 2012, the employer contacted the Workforce Development Tax Bureau by e-mail to contest liability on the claim.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.7-2-a(6) provides:

2. Contribution rates based on benefit experience.

a. (6) Within forty days after the close of each calendar quarter, the department shall notify each employer of the amount of benefits charged to the employer's account during that quarter. The notification shall show the name of each individual to whom benefits were paid, the individual's social security number, and the amount of benefits paid to the individual. An employer which has not been notified as provided in section 96.6, subsection 2, of the allowance of benefits to an individual, may within thirty days after the date of mailing of the notification appeal to the department for a hearing to determine the eligibility of the individual to receive benefits. The appeal shall be referred to an administrative law judge for hearing and the employer and the individual shall receive notice of the time and place of the hearing.

871 IAC 24.35(1), (2) provides:

(1) Except as otherwise provided by statute or by department rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the department shall be considered received by and filed with the department:

a. If transmitted via the United States postal service or its successor, 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 or its successor, on the date it is received by the department.

(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.

The evidence in the record establishes that the employer was denied the opportunity to submit a timely protest of the Notice of Claim as a result of error on the part of Workforce Development or the United States Postal Service. The employer protested the charge to their account within a few days of Workforce Development mailing to the employer a quarterly statement of charges that included charges for benefits paid to the claimant. The employer's protest was timely. The claimant has requalified for benefits. The claimant remains eligible for benefits, provided she is otherwise eligible. The employer's account shall not be charged.

DECISION:

The Agency representative's April 13, 2012, reference 06, decision is modified as follows. The employer's protest was timely. The claimant remains eligible for benefits, provided she is otherwise eligible. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs