

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

TARA J HECK
Claimant

APPEAL NO. 18A-UI-01385-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**JASPER COUNTY COUNCIL FOR THE
PREVENTION OF CHILD ABUSE**
Employer

**OC: 12/17/17
Claimant: Respondent (1)**

Iowa Code section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 26, 2018, 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 February 23, 2018. Claimant Tara Heck participated. Jackie Sparks represented the employer. Department Exhibit D-1 was received into evidence. The administrative law judge took official notice of the Agency's administrative record (WAGEA) of wages the claimant was paid subsequent to her separation from the employer and prior to establishing her unemployment insurance claim.

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 December 20, 2017, 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 United States Postal Service post office box in Newton. 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 January 2, 2018. The protest due date had been extended on the notice of claim form to 13 days from the mailing date of the notice of claim because the protest due date would otherwise have fallen on Saturday, December 30, 2017. The next working day following, Saturday, December 30, 2017 was Tuesday, January 2, 2018. The notice of claim was received at the employer's post office box in a timely manner, prior to the deadline for protest. Jackie Sparks, Director, collected the notice of claim from the employer's post office box sometime before the Christmas holiday. Ms. Sparks does not recall the specific date that she collected the notice of claim from the post office box. On January 3, 2018, Ms. Sparks mailed the notice of claim to Iowa Workforce Development. The envelope in which the employer

mailed the notice of claim, bears a January 3, 2018, 4:00 p.m. Des Moines postmark. Iowa Workforce Development received the employer's mailed protest on January 4, 2018.

Following her February 2017 separation from this employer and prior to establishing the unemployment insurance claim that was effective December 17, 2017, Tara Heck performed insured work for a different employer for which she was paid well in excess 10 times her \$425.00 unemployment insurance weekly benefit amount.

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.

The evidence in the record establishes that the employer's protest was untimely. The evidence establishes that the employer had a reasonable opportunity to file a protest by the January 2, 2018 protest due date. The employer's protest was filed on January 3, 2018, per the postmark date set forth on the mailed protest. The evidence establishes that the late filing of the protest was attributable to the employer and not attributable to Workforce Development error or misinformation or delay or other action of the United States Postal Service. The evidence fails to establish 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, 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 January 26, 2018, reference 03, 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs