

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**CINDY L REDING**

Claimant

**APPEAL NO. 18A-UI-09888-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FOCUS SERVICES LLC**

Employer

**OC: 08/12/18**

**Claimant: Respondent (3)**

Iowa Code section 96.6-2 - Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer filed an appeal from the September 24, 2018, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible, that held the employer's account could be charged for benefits, based on the Benefits Bureau deputy's conclusion that the claimant was discharged on August 16, 2018 for no disqualifying reason. After due notice was issued, a hearing was held by telephone conference call on October 25, 2018. Claimant Cindy Reding participated. Naomi Strange of Employer Solutions Group represented the employer and presented additional testimony through Marilyn Schenck, Todd Bean, Aggie Pratt, Kodi McInerney and Nathan Casel. Exhibit 1 through 7 were received into evidence. The administrative law judge took official notice of the benefits disbursed to the claimant and of the protest/fact-finding materials scanned into the Agency's computer system, which materials were provided to the parties in advance of the appeal hearing.

**ISSUES:**

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: Focus Services, L.L.C. is the employer in interest. Focus Services had designated Employer Solutions Group (ESG) as Focus Services' third-party representative of record for unemployment insurance matters. Focus Services, L.L.C., through ESG, has elected to receive electronic notice of claims via the United States Department of Labor State Information Data Exchange System (SIDES) and to provide an electronic response/protest via SIDES. On August 17, 2018, Iowa Workforce Development transmitted an electronic notice of claim regarding claimant Cindy Reding to Focus Services, care of ESG, by posting the notice of claim on SIDES. The posting provided August 30, 2018 as the deadline to protest the claim. That date was 13 days past the date the notice of claim was posted on SIDES. Also on August 17, 2018, Iowa Workforce Development sent an email message to ESG, at the email address designated by ESG, to alert ESG to the SIDES posting of the notice of claim. The weight of the evidence establishes that the email alert was received on August 17, 2018 at the email address designated by ESG.

Neither ESG nor Focus Services transmitted a protest by the August 30, 2018 deadline. During August 2018, ESG experienced some employee turnover. ESG did take appropriate steps in connection with this employee turn-over to monitor for notices of claims transmitted from Iowa Workforce Development. From August 17, 2018 through September 10, 2018, no one from ESG reviewed SIDES for Iowa notices of claims or otherwise responded to the email alert that was delivered on August 17, 2018 to the email address designated by ESG. On August 24, 2018, ESG supervisor Marilyn Schenck started a planned vacation without making appropriate arrangements to monitor for or respond to Iowa notices of claims. Ms. Schenck's return to the workplace was delayed to September 5, 2018 due to a family member's health issue. On September 11, 2018, Naomi Strange, a new ESG employee who had just started on August 27, 2018, received an email alert regarding a different claim and claimant and discovered at that time that ESG had a SIDES account for Iowa claims. On September 11, Ms. Strange transmitted an electronic protest regarding claimant Cindy Reding to Iowa Workforce Development via SIDES. At that point, the protest was 12 days past due. Despite the late protest, on September 13, 2018, an Iowa Workforce Development Benefits Bureau deputy, in response to the late protest, mailed notice to the parties of a fact-finding interview scheduled for September 21, 2018. At the time of the fact-finding interview, Ms. Reding challenged the timeliness of the protest, but did not receive a ruling or other response regarding the timeliness of the protest issue.

#### **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 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 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 Iowa Code section 96.6(2), 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 indicates that the employer's protest was untimely. Iowa Workforce Development electronically transmitted a notice of claim, along with an email alert, to the employer's agent on August 17, 2018, pursuant to employer's election, through its agent, to receive electronic notice of claims. Both the SIDES posting and the email alert were immediately available to the employer's agent, but the employer's agent failed to take reasonable and appropriate steps to monitor for Iowa notices of claims. In setting an August 30, 2018 protest deadline, Iowa Workforce Development provided the employer with more than the statutorily-mandated 10 days to respond to notice of claim by providing a 13-day window for response. For more than three weeks, August 17 through September 10, the employer's agent unreasonably failed to monitor for Iowa claims and unreasonably failed to take any action on the notice of claim that was transmitted to the employer's agent on August 17, 2018. The protest was filed on September 11, 2018, when Iowa Workforce Development received it. That date was the 25th day following transmission of the notice of claim. The weight of the evidence establishes that the employer, through its agent, had a reasonable opportunity to file the protest by the August 30, 2018, but failed to file a timely protest due to negligence within ESG. The late filing of the protest was not caused by Iowa Workforce Development or by the United States Postal Service. Accordingly, there is not good cause to treat the late protest as a timely protest. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

**DECISION:**

The September 24, 2018, reference 01, decision is modified as follows. 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.

In the event this decision regarding the jurisdictional timeliness of protest issue is reversed upon further appeal, there is sufficient evidence in the record for a decision on the merits of the appeal without need for further hearing.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs