

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KORY BUCKLEY Claimant SUPERIOR TUBE PRODUCTS INC Employer	68-0157 (9-06) - 3091078 - EI APPEAL NO. 19A-UI-05370-JTT ADMINISTRATIVE LAW JUDGE DECISION OC: 06/09/19 Claimant: Respondent (1)
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Iowa Code Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 27, 2019, reference 03, 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 July 30, 2019. Claimant Kory Buckley participated. Heather Cody represented the employer. Exhibits 1 and 2 and Department Exhibit D-1 were received into evidence.

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: On June 11, 2019, Iowa Workforce Development mailed a notice of claim concerning claimant Kory Buckley 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 of claim, which date was June 21, 2019. The notice of claim was received at the employer's address of record in a timely manner, prior to the deadline for protest. On June 19, 2019, Dana Schultz, Human Resources Generalist, completed the employer's protest information on the notice of claim form. Ms. Schultz then made an unsuccessful attempt to fax the protest by "remoting in" to an employer fax machine/system. Ms. Schultz was immediately aware that there was a problem with the fax and enlisted the assistance of Heather Cody, Human Resources Manager. Ms. Cody "remoted in" to an employer fax machine/system and erroneously used a pre-set function to send the protest to the employer's Accounts Payable department, rather than to Iowa Workforce Development. The employer's Accounts Payable staff misperceived the notice of claim to be an invoice that needed to be paid and contacted Ms. Cody on the morning of June 25, 2019 for guidance in paying the invoice. Ms. Cody's faxing error came to her attention at that time. On that morning, Ms. Cody telephoned Iowa Workforce Development and then faxed a protest to the correct number at Iowa Workforce Development. The Unemployment Insurance Service Center received the faxed protest on June 25, 2019 and marked it as a late protest.

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 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 employer had a reasonable opportunity to file a protest by the June 21, 2019 protest deadline. On June 19, 2019, the employer misdirected the protest to the employer's accounting department. The employer did not transmit a protest to Iowa Workforce Development by the June 21, 2019 protest deadline and did not actually file a protest until June 25, 2019. Because the employer had a reasonable opportunity to file a protest by the protest deadline but filed a late protest, the administrative law judge must consider whether there is good cause under the law to treat the late protest as a timely protest. The late filing of the protest was attributable to the employer's error and internal operations. The late filing of the protest was not attributable to Iowa Workforce Development or to the United States Postal Service. Accordingly, the administrative law judge must conclude there is not good cause under the law 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 June 27, 2019, reference 03, decision is affirmed. The employer's protest was untimely. The claimant is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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