IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JAMES C BENSEN
Claimant

CRYSTAL CLEAR COMMUNICATIONS INC
CRYSTAL CLEAR COMMUNICATIONS
Employer

APPEAL NO. 08A-UI-05079-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/02/07 R: 01
Claimant: Respondent (4)

Iowa Code Section 96.5(2) – Timeliness of Protest
Iowa Code Section 96.7(2)(a)(6) – Protest from Statement of Charges
Iowa Code Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Crystal Clear Communications, Inc., filed an appeal from the May 16, 2008, reference 03, decision that allowed benefits to claimant James Bensen and deemed the employer's protest untimely. After due notice was issued, a telephone hearing was commenced on June 11, 2008 and concluded on June 18, 2008. Claimant James Benson did not provide a telephone number for the June 11 proceeding and did not participate. Mr. Benson participated in the June 18 proceedings. Eva Otanez, Administrative Assistant, represented the employer. On June 11, Julio Otanez, President, was also present on behalf of the employer. The administrative law judge received Department Exhibits D-1 through D-5 into evidence. The administrative law judge took official notice of the Agency's administrative records concerning wages earned by the claimant since his separation from this employer. The administrative law judge left the record open so that the employer could submit documentation of the employer's contact with the Chargeback Unit on May 23 and 27, 2008, which material has been received into the record as Exhibit One.

ISSUES:

Whether the employer's appeal was timely and/or whether there is good cause to deem the employer's late appeal timely.

Whether the employer's protest is timely and/or whether there is good cause to deem the employer's late protest timely.

Whether the employer should be relieved of charges for benefits paid to claimant James Bensen.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant James Bensen separated from his employment with Crystal Clear Communications, Inc., on

January 24, 2007. Mr. Bensen established a claim for unemployment insurance benefits that was effective December 2, 2007. By the time Mr. Bensen established his claim for benefits, he had earned at least ten times his weekly benefit amount since separating from Crystal Clear Communications and had requalified for unemployment insurance benefits.

On December 10, 2007, Workforce Development mailed Crystal Clear Communications, Inc., a Notice of Claim concerning Mr. Bensen's application for benefits. The Notice of Claim was mailed to the employer's address of record. The employer did not receive the Notice of Claim. The employer first learned of Mr. Bensen's claim for benefits, and the employer's liability for benefits, when the employer received a quarterly Statement of Charges for the first quarter of 2008. The Statement of Charges assessed the employer $325.16 for benefits paid to Mr. Bensen. Workforce Development had mailed the Statement of Charges to the employer on May 9, 2008. The claim concerning Mr. Bensen represented the employer's first experience with an unemployment insurance claim.

On May 14, 2008, the employer faxed a letter to the Benefits Bureau/Chargeback Unit. In the letter, the employer indicated it had no prior knowledge of Mr. Bensen's claim and that Mr. Bensen had voluntarily separated from the employment to seek other employment.

On May 16, Jan Thomas of the Benefits Bureau/Chargeback Unit, faxed a response to the employer. In response to the employer's May 14 letter, Ms. Thomas had entered the May 16, 2008, reference 03, decision that allowed benefits to claimant James Bensen and deemed the employer's protest untimely. Ms. Thomas included a copy of the reference 03 decision in her May 16 fax to the employer. The reference 03 decision contained a warning that an appeal must be postmarked or received by the Appeals Section by May 26, 2008. The reference 03 decision indicated that if the appeal deadline fell on a legal holiday, the deadline would be extended to the next working day. May 26, 2008, was Memorial Day. The next working day was Tuesday, May 27, 2008. Ms. Thomas also included a copy of the Notice of Claim in her May 16 fax to the employer. Ms. Thomas provided the following instructions to the employer: "Attached is a copy of the decision dated May 16, 2008, that allowed benefits. If you disagree with this decision, please follow the instruction for appeal on the original decision." Ms. Thomas was referring to the reference 03 decision that Workforce Development mailed to the employer's address of record on May 16, 2008. The employer erroneously concluded that Ms. Thomas was referring to the Notice of Claim. Ms. Thomas' May 16 fax to the employer did not include the reverse side of the Notice of Claim or the reverse side of the reference 03 decision. In other words, Ms. Thomas' May 16 fax to the employer lacked clear instructions to the employer regarding what further steps the employer needed to take to challenge the assessment to its account for benefits paid to Mr. Bensen.

On May 16, 2008, Workforce Development had in fact mailed the reference 03 decision to the employer. The employer received the mailed decision in a timely fashion, prior to the deadline for appeal. The mailed decision contained the warning that an appeal must be postmarked or received by the Appeals Section by May 26, 2008. The mailed reference 03 decision indicated that if the appeal deadline fell on a legal holiday, the deadline would be extended to the next working day. May 26, 2008, was Memorial Day. The next working day was Tuesday, May 27, 2008.

The employer did not open the reference 03 decision that was mailed to the employer. Because the employer did not open the mailed decision, the employer did not see the appeal instructions.

On May 27, the deadline for appeal, the employer faxed an appeal letter to the Benefits Bureau/Chargeback Unit. In the appeal letter, the employer indicated that it considered its

May 14 fax an appeal. The employer reasserted that it was appealing the charge to its account. The employer requested further explanation of what exactly it needed to do to appeal the charge to its account.

On May 28, Ms. Thomas of the Benefits Bureau/Chargeback Unit telephoned the employer and explained that the employer's appeal from the May 16, reference 03 decision needed to be directed to the Appeals Section, rather than to the Benefits Bureau/Chargeback Unit.

On May 28, one day after the deadline for appeal, the employer faxed an appeal to the Appeals Section. The faxed appeal was in fact received by the Appeals Section on May 28, 2008.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge will first address the timeliness of appeal issue.

Iowa Code section 96.6-2 provides:

> 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. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The ten-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. Gaskins v. Unempl. Comp. Bd. of Rev., 429 A.2d 138 (Pa. Comm. 1981); Johnson v. Board of Adjustment, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

871 IAC 24.35(1) 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:
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> 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.
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> 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.

In this case, the employer's appeal was not received by the Unemployment Insurance Appeals Section until May 28, 2008, one day after the deadline for appeal.

The evidence in the record establishes that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. Franklin v. IDJS, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. Beardslee v. IDJS, 276 N.W.2d 373, 377 (Iowa 1979); see also In re Appeal of Elliott, 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. Hendren v. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC, 212 N.W.2d 471, 472 (Iowa 1973).

The evidence in the record shows that the employer did have a reasonable opportunity to file a timely appeal from the May 16, 2008, reference 03 decision. The evidence shows that the employer was negligent in failing to open the mailed decision it had received. However, the evidence indicates that the employer was at all relevant times on or after May 14 engaged in a good faith effort to file an appeal of the assessment to its account. In addition, the evidence shows that the Workforce Development representative contributed to the confusion by providing incomplete information and/or directions in the May 16 fax to the employer. Though the reference 03 decision indicated on its face that the employer needed to direct its appeal to the Appeals Section, the May 16 fax to the employer did not contain the reverse side of the decision that contained the instructions the employer needed to follow to file its appeal. The evidence shows that the employer attempted to file a timely appeal on May 27, when it faxed an appeal to the Benefits Bureau/Chargeback Unit. The evidence shows that as soon as the employer learned it had erred in directing the appeal to the Benefits Bureau/Chargeback Unit, the employer filed an appeal with Appeals Section on May 28, one day after the deadline.

871 IAC 24.35(2) provides:

> (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.

Because the Workforce Development representative contributed to the employer's confusion, the administrative law judge concludes there is good cause to deem the employer's late appeal timely. The administrative law judge concludes that he has jurisdiction to consider and rule on the merits of the appeal.

The administrative law judge will now address the timeliness of protest issues. The law provisions cited above apply equally to the timeliness of protest issue.

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.

The weight of the evidence in the record indicates that the employer did not receive the Notice of Claim Workforce Development mailed on December 10, 2007. The evidence indicates that the employer first learned of the claim when it received the Statement of Charges mailed on May 9, 2008. The evidence indicates that the employer protested the assessment to its account on May 14, 2008 by means of the fax directed to the Benefits Bureau/Chargeback Unit. The employer's protest was timely under Iowa Code section 96.7(2)(a)(6). There is good cause to deem the employer's protest timely under Iowa Code section 96.6(2).

A person who voluntarily quit employment without good cause attributable to the employer shall not be disqualified if, subsequent to the quit, the person worked in and was paid wages for

insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible. Iowa Code section 96.5(1)(g).

The Agency's records indicate that Mr. Bensen has requalified for benefits by earning ten times his weekly benefit amount since he left the employment with Crystal Clear Communications, Inc. Accordingly, Mr. Bensen is eligible for benefits, provided he is otherwise eligible. The employer shall be relieved of liability for benefits paid to Mr. Bensen. Any prior payment made by the employer for benefits paid to Mr. Bensen shall be credited to the employer.

DECISION:

There is good cause to deem the employer's appeal timely. The representative's decision dated May 16, 2008, reference 03, is modified. The employer's protest was timely. The claimant has requalified for benefits. The claimant is eligible for benefits, provided he is otherwise eligible. The employer shall be relieved of liability for benefits paid to the claimant. Any prior payment made by the employer for benefits disbursed to the claimant shall be credited to the employer.

The employer is specifically counseled to immediately open and carefully read every item of correspondence it receives from Workforce Development.

_____
James E. Timberland
Administrative Law Judge

_____
Decision Dated and Mailed

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