

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAVIER PEREZ**

Claimant

**APPEAL NO. 12A-UI-14926-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEST LIBERTY FOODS LLC**

Employer

**OC: 11/18/12**

**Claimant: Respondent (1)**

Iowa Code Section 96.6-2 - Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the December 10, 2012, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's protest was untimely. After due notice was issued, a hearing was held by telephone conference call on January 24, 2013. Claimant Javier Perez participated. Alejandra Rojas, Human Resources Specialist, represented the employer. Spanish-English interpreter Isabel Edwards assisted with the hearing. Exhibit One 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 November 26, 2012, Iowa Workforce Development mailed a notice of claim concerning the above claimant to the employer's correct address of record. The notice of claim contained a warning that any protest must be postmarked or faxed to Iowa Workforce Development at the fax number or address provided by the due date set forth on the notice, which was December 6, 2012. The employer received the notice of claim on or before November 30, 2012. On that day, Alejandra Rojas, Human Resources Specialist, received a copy of the notice of claim, front and back, by email from the employer's West Liberty office. On December 6, 2012, Ms. Rojas completed the employer's protest information on notice of claim form.

On December 6, 2012 at 6:36 p.m., Ms. Rojas *emailed* the employer's protest to [uicclaimshelp@iwd.iowa.gov](mailto:uicclaimshelp@iwd.iowa.gov). The employer made no attempt to comply with the notice of claim instructions to fax or mail the employer's response to the notice of claim. Those instructions were set forth on both the front and back of the notice of claim. Ms. Rojas' decision to *email* the employer's protest concerning claimant Javier Perez was based on a conversation she had with a Burlington Workforce Development Center representative in *May* 2012 about an issue the employer was having at that time with submitting a protest by fax. There is no connection

between the May 2012 issue and Mr. Perez's claim. Neither Ms. Rojas nor anyone else from the employer encountered any similar problem with submitting a protest concerning Mr. Perez by fax. No one tried. Neither Ms. Rojas nor anyone else from the employer contacted Workforce Development for authorization to submit a protest by a method other than fax or mail. On November 7, 2012, at 9:49 a.m., a Workforce Development Claims representative acknowledged receipt of the employer's email message. The Unemployment Insurance Service Center marked the employer's protest as being received on December 7, 2012 and marked it as late.

## **REASONING AND CONCLUSIONS OF LAW:**

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:

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.

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.

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 timely protest. The employer had at least six days from receipt of the notice of claim to file a timely protest. The employer disregarded the notice of claim instructions to submit the protest by fax at the number provided or by mail at the address provided. No protest was filed by the December 6, 2012 deadline. The employer argues that the protest emailed to uicclaimshelp@iwd.iowa.gov should be treated as a timely protest. Neither the Iowa Code nor the Iowa Administrative Code authorizes submission of an employer protest by means other than as directed by the agency. Even if either body of law authorized submission by email, the weight of the evidence indicates that the email was received on the morning of December 7, 2012, when a Workforce Development representative acknowledged receipt of the email.

The evidence establishes that the employer's failure to file a timely protest was not attributable to Workforce Development error or misinformation or delay or other action of the United States Postal Service. Accordingly, 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 stand and remain in full force and effect.

**DECISION:**

The employer's protest was untimely. The Agency representative's December 10, 2012, reference 01, decision is affirmed. The Agency's initial determination of the claimant's eligibility for benefits and the employer's liability for benefits shall stand and remain in full force and effect.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/tll