

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEVIN W ROUSE

Claimant

APPEAL NO. 14A-UI-11866-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 12/22/13

Claimant: Appellant (2)

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

Kevin Rouse filed a timely appeal from the November 13, 2014, reference 05, decision that disqualified him for benefits and that relieved the employer of liability for benefits; based on an Agency conclusion that Mr. Rouse had voluntarily quit on September 29, 2014 without good cause attributable to the employer. In his appeal letter, Mr. Rouse asserted that the employer's protest was untimely. The Appeals Bureau did not add timeliness of protest as an issue to be addressed at the appeal hearing. On November 20, 2014 the Appeals Bureau mailed notice to the parties of the December 8, 2014 hearing to address the claimant's separation from the employment. The hearing in this matter was consolidated with the hearing in companion Appeal No. 14A-UI-11867-JTT. The employer submitted written notice that that the employer was waiving its presence at the hearing. Mr. Rouse appeared at the time set for the hearing. Mr. Rouse declined to waive formal notice on the timeliness of protest issue so that the issue could be added to the hearing. Though the administrative law judge initially concluded that this matter, and the companion case, would have to be rescheduled, upon further reflection the administrative law judge concludes, in light of the employer's waiver of presence and in light of the fact that a decision entered on timeliness of protest would not be adverse to the claimant, that the claimant eligibility and the employer's liability may be decided based on the Agency's administrative record without need for a hearing. The administrative law judge hereby takes official notice of the electronic notice of claim and the electronic protest filed by the employer.

ISSUE:

Whether the employer's protest of the claim for benefits was timely.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The employer, Casey's Marketing Company, has elected, through its representative of record Equifax Workforce Solutions/Talx, to receive electronically transmitted notices of claim. On October 23, 2014 Iowa Workforce Development electronically transmitted to the employer's representative of record a notice of claim concerning Mr. Rouse. The electronic notice of claim contained a warning that the employer's protest must be received by November 3, 2014. On November 4, 2014 the employer, through Equifax/Talx, electronically submitted its protest. The protest was a day late.

REASONING AND CONCLUSIONS OF LAW:

Iowa Admin. Code r. 871-24.35(1), (2) 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.

(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.

Iowa Code § 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 establishes that the employer had a reasonable opportunity to file a timely protest. The employer, through its representative of record, received the notice of claim on October 23, 2014 and had 10 days in which to file a timely protest. The employer did not create or transmit its protest until November 4, 2014; a day late. The employer's delay in filing the protest was not attributable to Workforce Development error or misinformation or delay or other action of the United States Postal Service. The delay was instead attributable to the employer. Because the employer's protest was late, the employer failed to preserve its right to contest liability on the claim or the claimant's eligibility for benefits in connection with the separation from employment. In addition, because the employer's protest was untimely, Workforce Development should not have considered the protest or entered a decision adverse to the claimant based on the protest or the ensuring fact-finding interview. Based on the employer's untimely protest, the claimant is eligible for benefits, provided he is otherwise eligible; and the employer's account may be charged for benefits paid to the claimant.

DECISION:

The November 13, 2014, reference 05, decision is reversed. The employer's protest was untimely. The claimant is eligible for benefits, provided he is otherwise eligible; and the employer's account may be charged for benefits paid to the claimant.

Either party may file a written request to reopen the hearing record, but must do so no later than 15 days from the mailing date of this decision.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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