

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ESTELA L GARCIA
Claimant

APPEAL NO. 15A-UI-10905-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QPS EMPLOYMENT GROUP INC
Employer

OC: 06/28/15
Claimant: Respondent (4)

Iowa Code Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 17, 2015, reference 02, decision that allowed benefits to the claimant provided the claimant 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. An appeal hearing was set for October 14, 2015 and the parties were properly notified of the hearing. Upon review of the administrative file, the administrative law judge concludes that a hearing is unnecessary in order to provide the remedy requested by the employer. Based on the law and the content of the administrative file, namely the electronic notice of claim/protest and the record of the claimant's wages subsequent to separating from the employer, the administrative law judge enters the following decision.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The employer has elected to receive electronic notice of claims. On July 6, 2015, Iowa Workforce Development electronically transmitted to the employer a notice of claim concerning the above claimant. The notice of claim materials erroneously set July 13, 2015 as the deadline for the employer's protest, rather than the correct deadline date of July 16, 2015. In other words, a computer error occurred. Workforce Development received the employer's electronic protest, via the electronic broker, on July 14, 2015. Since separating from the employer, the claimant has requalified for benefits by earning ten times the claimant's weekly benefit amount through insured employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Admin. Code r. 871-24.35(1) provides:

(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 by any means other than the United States postal service on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(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 § 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.

The correct protest deadline pursuant to the statute was July 16, 2015. The employer's protest was filed on July 14, 2015, when the protest was received by the electronic broker. The employer's protest was timely. The claimant has worked in and been paid wages equal to ten times the weekly benefit amount subsequent to separating from the employer and prior to the claim for benefits. The claimant is eligible for benefits, provided the claimant meets all other eligibility requirements. The employer's account is relieved of liability for benefits.

DECISION:

The July 17, 2015, reference 02, decision is modified as follows. The employer's protest was timely. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account will not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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