

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER L GATLIN
Claimant

APPEAL NO. 18A-UI-01228-TNT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TNT WHEELDON INC
Employer

OC: 11/19/17
Claimant: Respondent (2R)

Section 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

TNT Wheeldon, Inc. filed an appeal from a representative's unemployment insurance decision dated January 22, 2018, reference 03, which held that the protest concerning Jennifer L. Gatlin separation on April 30, 2017, was not timely filed. After due notice was issued, the hearing was held by telephone on February 21, 2018. Although duly notified, the claimant did not participate. The employer participated by Ms. Tiffany Wheeldon. Employer's Exhibit 1 was admitted into the hearing record. Department's Exhibit D-1 was admitted into the hearing record

ISSUE:

Whether the employer filed a timely protest on the claim of Jennifer L. Gatlin as required by law.

FINDINGS OF FACT:

The administrative law judge, having considered all the evidence in the record finds: A notice of claim filed on the claim of Jennifer Gatlin was mailed to the employer's address of record on November 28, 2017, and received by the employer within ten days. The notice of claim contained a warning that any protest must be postmarked or returned not later than ten days from the initial mailing date. The protest was due to be postmarked or received by Iowa Workforce Development by December 8, 2017. The employer did not effect a protest until January 12, 2018, which is after the ten day period had expired.

Ms. Wheeldon attempted to file a protest on the claim of Jennifer Gatlin via facsimile on December 6, 2017 at 3:54 p.m. and at 3:55 p.m. on December 6, 2017. Transmission verification reports show that the fax on the transmission was successfully completed at the 3:54 p.m., however the transmission sent at 3:55 p.m. was not verified as transmitted because the line was busy.

On the protest, Ms. Wheeldon checked item number one under the employer's statement of protest indicating that the individual never worked for the employer.

The claimant's administrative file reveals that Tiffani Wheeldon dba TNT Wheeldon, Inc. acquired all the business of Devner Enterprises Inc., account # 512619 effective May 1, 2017.

On June 30, 2017, TNT Wheeldon, Inc. was sent a notice of liability for unemployment insurance contributions decision informing the company that the previous owner's experience rating would transfer to the new owner's account and that the new owner was liable for any debts the previous owner may owe Iowa Workforce Development.

A portion of the decision explained that Iowa Code Section 96.7-2.b(1) provides that if an organization trade or business or clearly a clearly segregable and identifiable part of a business for which work contributions had been paid is sold to a subsequent employing unit, and the successor employer having qualified as an employer ...continues to operate the organization trade or business, the successor employer assumes the position of the predecessor employer with respect to the predecessor's payroll contributions accounts and contribution rates to the same extent as if no change had taken place in the ownership or control of the organization period of business.

Ms. Wheeldon did not appeal the agency decision that transferred the previous employer's experience report to her account and also the previous liability for unemployment insurance claims. Because Ms. Wheeldon wished to protest the payment of any unemployment insurance benefits to the claimant and the charging benefits to her account, she transmitted the employer's protest by facsimile on December 6, 2017 at 3:54 p.m. and received a positive facsimile verification report that the transmission had been successfully sent and received by the agency.

REASONING AND CONCLUSIONS OF LAW:

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.

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

The administrative law judge concludes that the employer filed its protest within the time period prescribed by the Iowa Employment Security Law, because the employer relied by protesting the claim which the ten day time period allowed, it did initially reply to the notice of claim indicating that the claimant had not been an employee. The protest was transmitted by facsimile on December 6, 2017 at 3:54 p.m. and the employer reasonably concluded that it had

been successfully transmitted by the positive transmission verification report that was received. The evidence in the record is sufficient to establish that the employer filed its protest timely and evinced an intent to protest any potential charges with the account. The issue of the claimant's job separation is remanded to Claims Section of Iowa Workforce Development for an initial investigation and determination.

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 that court in that decision 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 employer has established that the employer protested he claim for benefits on December 6, 2017.

The administrative law judge concludes the employer did effect a timely protest within the time period prescribed by the Iowa Employment Security Law. The issue of the claimant's job separation is Remanded to the Claim's Division of Iowa Workforce Development for an initial investigation and appealable determination.

DECISION:

The January 22, 2018, reference 03 decision is reversed. The employer has filed a timely protest.

REMAND:

The separation issue is remanded to the claims section of Iowa Workforce Development for initial investigation and appealable determination.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn