

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SANDY L MEGREW**  
Claimant

**APPEAL NO. 06A-UI-11279-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DES STAFFING SERVICES INC**  
Employer

**OC: 11/18/07 R: 04**  
**Claimant: Respondent (1)**

Section 96.6-2 - Timeliness of Protest

**STATEMENT OF THE CASE:**

DES Staffing Services filed an appeal from the December 5, 2007, reference 01, decision that allowed benefits and found the protest untimely. After due notice was issued, a hearing was held by telephone conference call on January 8, 2008. The claimant participated. The employer participated through Amy MacGregor, Human Resources Representative. Employer's 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 good cause existed for a late filing of the protest.

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: Claimant's Notice of Claim was mailed to the employer's address of record on November 20, 2007. The Notice of Claim contained a warning that any protest must be postmarked, faxed or returned by the due date set forth on the notice, which was November 30, 2007. The Notice of Claim was received at the employer's address of record in a timely fashion, prior to the deadline for protest. Human Resources Representative Amy MacGregor handled the employer's protest of the claim for benefits. Ms. MacGregor did not document the date she received the Notice of Claim. When Ms. MacGregor received the Notice of Claim, she noted the deadline for protest. At the time Ms. MacGregor received the Notice of Claim, she also signed and dated the certification box in the lower right hand corner of the protest form. Ms. MacGregor certified the accuracy of the information on the protest form before she actually completed all of the information on the protest form. Ms. MacGrew dated the certification November 30, 2007, though that was not the date she actually signed the certification.

On November 29, Ms. MacGregor faxed four pages of material to Iowa Workforce Development and received a fax confirmation that indicated that fax transmission was successful. Ms. MacGregor does not recall what at least three of those four pages of material were, but asserts that one page of the material was the employer's protest of Notice of Claim concerning Sandy Megrew.

On December 3, 2007, Ms. MacGregor located the Notice of Claim concerning Mr. Megrew in a box of material to be faxed out from DES Staffing. If a protest had previously been faxed, it would not ordinarily have been placed in the box of material to be faxed out from DES Staffing. On December 3, 2007, Ms. MacGregor faxed the employer's protest to Iowa Workforce Development. The December 3, 2007, fax was received by Iowa Workforce Development. The fax Ms. MacGregor believes she sent on November 29, 2007 was not received by Iowa Workforce Development.

Since the employer received the December 5, 2007, reference 01 decision that deemed the employer's protest in this matter untimely, the employer has obtained a new fax machine and had otherwise revised its protest processing protocol.

## **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 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 not shown any good cause for not complying with the jurisdictional time limit. Therefore, the administrative law judge is without jurisdiction to entertain any appeal regarding the separation from employment.

The employer has failed to present sufficient evidence to establish, by a preponderance of the evidence, that the employer's protest in this matter was timely. The weight of the evidence indicates otherwise. The weight of the evidence indicates that there were multiple irregularities in the employer's handling of the protest concerning Ms. Megrew. The greater weight of the evidence indicates that the employer did not submit its protest in this matter until December 3, 2007, the day Ms. MacGregor discovered the protest form in her box of materials to be faxed to Iowa Workforce Development. The evidence indicates that the employer's protest was faxed by the employer and received by Iowa Workforce Development on December 3, 2007. This was the filing date of the protest and was beyond the November 30, 2007 deadline.

The evidence further establishes that the employer's failure to file a timely protest was not attributable to Iowa Workforce Development error or misinformation or delay or other action of the United States Postal Service. Accordingly, the administrative law judge lacks jurisdiction to make a 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 Agency representative's December 5, 2007, 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.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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