

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JERRY J RYAN
Claimant

APPEAL NO. 17A-UI-00526-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY OF LUTHER
Employer

OC: 12/04/16
Claimant: Respondent (1)

Iowa Code section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed an appeal from the January 9, 2017, reference 02, decision that allowed benefits to the claimant provided he 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. After due notice was issued, a hearing was held by telephone conference call on February 6, 2017. Claimant Jerry Ryan participated. Deanna Sandegren represented the employer. Exhibit 1 and Departments Exhibits D-1 and D-2 were received into evidence.

ISSUE:

Whether there is good cause to deem the employer's late protest timely.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: On December 12, 2016, Iowa Workforce Development mailed a notice of claim concerning the above claimant to the employer's address of record. 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 December 22, 2016. The notice of claim was received at the employer's address of record in a timely manner, prior to the deadline for protest. Deanna Sandegren is the City Clerk for the City of Luther. Ms. Sandegren began her employment in April 2016. Ms. Sandegren's employment is part-time with minimal hours and no set work hours. During some weeks, Ms. Sandegren might work a couple hours on City business. During other weeks, Ms. Sandegren might not perform any work for the City. Prior to the problems that arose in connection with the present matter, the City had no arrangements in place to ensure that someone checked the City's mailbox on a regular basis. Ms. Sandegren does not know whether she collected the December 12 notice of claim from the mailbox or whether the City Treasurer collected it from the mailbox. On December 27, 2016, Ms. Sandegren completed the City's protest information on the notice of claim form. Ms. Sandegren certified the information as accurate and dated the certification December 27, 2016. On that same day, Ms. Sandegren mailed the protest to Workforce Development. The envelope in which the protest was mailed

bears a December 27, 2016 postmark. The Unemployment Insurance Service Center received the protest on December 29, 2016 and marked it late.

REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(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 division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

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 division 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 division error or misinformation or delay or other action of the United States postal service, the division 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.

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 notice of claim arrived at the employer's address of record in a timely manner, well before the December 22, 2016 protest deadline. The evidence establishes that the employer had no provision for checking the employer's mailbox on a regular basis and that the notice of claim correspondence went without response for an extended period until December 27, 2016, when Ms. Sandegren completed the employer's protest information on the form and mailed the protest back to Workforce Development. The protest was deemed filed on December 27, 2016, the postmark date on the envelope. The weight of the evidence establishes that the employer had a reasonable opportunity to file a timely protest, but failed to do so. The late filing was attributable to the employer's internal operations and not attributable to Workforce Development or the United States Postal Service. The evidence does not establish good cause to treat the late protest as a timely protest. Because the protest was untimely, the administrative law judge lacks jurisdiction to disturb Workforce Development's initial determination regarding the nature of the claimant's separation from the employment, the claimant's eligibility for benefits, and 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 remain in effect.

As noted at the time of the hearing, the employer's liability for the entire claim year in question is capped at \$40.00.

DECISION:

The January 9, 2017, reference 02, decision is affirmed. The employer's protest was untimely. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs