

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMBER R BAILEY
Claimant

APPEAL NO. 17A-UI-06888-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DICKINSON COUNTY
Employer

OC: 06/18/17
Claimant: Respondent (1)

Iowa Code section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 6, 2017, reference 01, decision that allowed benefits to the claimant provided she 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 July 26, 2017. Claimant Amber Bailey did not register a telephone number for the hearing and did not participate. Attorney Lonnie Saunders represented the employer and presented testimony through Jarrod Fischer and Gregory Baloun. Exhibit 1 and Department Exhibit D-1 were received into evidence.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: On June 20, 2017, Iowa Workforce Development mailed a notice of claim concerning claimant Amber Bailey to the employer's address of record. The employer is Dickinson County. The employer's address of record was and is the Dickinson County Auditor's office. The notice of claim contained a warning that any protest of the claim must be postmarked, faxed or returned by the due date set forth on the notice of claim, which date was June 30, 2017. The notice of claim was received by the Dickinson County Auditor's office in a timely manner, prior to the deadline for protest. On June 29, 2017, the Auditor's office personnel delivered the notice of claim to Kandi Kolpin, Office Manager for the Dickinson County Sheriff. Ms. Kolpin completed a portion of the employer's protest information on the notice of claim form and presented the notice of claim form to the Dickinson County Sheriff, Gregory Baloun, for his review and signature. Sheriff Baloun promptly signed the notice of claim form to certify the accuracy of the protest information, but did not date his signature in the space provided on the notice of claim form. The Sheriff's office returned the notice of claim form to the Auditor's office so that the Auditor's office staff could add applicable financial information to the notice of claim form. On the afternoon of Monday, July 3, 2017, the Dickinson County Auditor's office staff faxed the notice

of claim/protest to Iowa Workforce Development. Iowa Workforce Development received the protest that same day.

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 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 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 employer in interest is Dickinson County, not the Dickinson County Sheriff's office specifically. The employer has designated the Dickinson County Auditor's office as the address to which Iowa Workforce Development should direct notice of unemployment insurance claims. The weight of the evidence in the record establishes that the Dickinson County Auditor's office received the notice of claim in a timely manner, but then delayed forwarding the document to the Sheriff's office until the day before the protest was due. The weight of the evidence indicates that Dickinson County Sheriff's office completed its contribution to the protest/notice of claim on June 30, 2017, the day the protest was due, and returned the form to the Auditor's office, rather than transmitting the form to Iowa Workforce Development on the protest due date. The Auditor's office then delayed transmitting the protest until the following Monday, July 3, 2017. The evidence establishes that the employer, Dickinson County, had a reasonable opportunity to file a timely protest, but filed a late protest due to communication issues and/or delay within the County offices. Because the late filing of the protest was not attributable to Iowa Workforce Development error or misinformation or delay or other action of the United States Postal Service, the administrative law judge lacks jurisdiction to disturb the agency's initial determination that the claimant is eligible for benefits and that the employer is liable for benefits.

DECISION:

The July 6, 2017, reference 01, decision is affirmed. The employer's protest was untimely. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs