

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL O STAFFORD
Claimant

APPEAL NO. 09A-UI-15241-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JET AIR INC
Employer

OC: 8/30/09
Claimant: Respondent (1)

Iowa Code Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed an appeal from the October 7, 2009, reference 01, decision that allowed benefits and found the employer's protest untimely. After due notice was issued, a hearing was held by telephone conference call on November 12, 2009. The claimant participated. Toby Myers, Human Resources, represented the employer. Department Exhibits D-1 and D-2 were received into evidence.

ISSUE:

Whether the employer's protest of the claim for benefits was timely.
Whether there is good cause to deem the employer's late protest as timely.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: On September 4, 2009, 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 September 14, 2009.

Toby Myers, Human Resources, was the person with authority and responsibility for responding to correspondence from Iowa Workforce Development. Mr. Myers commenced a vacation on September 14, 2009 and returned from his vacation on September 23, 2009. The secretarial staff was responsible for collecting and distributing the mail. Mr. Myers does not know when the notice of claim was received at the employer's address of record. When Mr. Myers returned from his vacation, he was busy with other matters until September 25, 2009, when he dealt with the mail that had accumulated for him since the beginning of his vacation. The notice of claim was amongst that mail. The notice of claim envelope bore no indication that it has been delayed or misdirected before arriving at the employer's address of record. Mr. Myers saw that the employer's response was already past due, completed the notice of claim form, and faxed the form to Iowa Workforce Development. The Unemployment Insurance Service Center received the employer's faxed protest on September 25, 2009.

The weight of the evidence indicates that the notice of claim was received at the employer's address of record in a timely manner, prior to the deadline for protest.

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 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 employer had a reasonable opportunity to file a timely protest. The employer cannot say when the notice of claim was received and has offered no testimony from the secretarial staff who collected the notice of claim with the employer's other mail. The weight of the evidence indicates that the employer's failure to file a timely protest was not attributable to Workforce Development error or misinformation or delay or other action of the United States Postal Service. Instead, the delay was attributable to the employer's absence from the workplace and the fact that no one else had authority to open or respond to the notice of claim. The administrative law judge lacks jurisdiction to disturb the Agency's initial 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 October 7, 2009, 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs