

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JEREMY E FISTER

Claimant

APPEAL NO. 20A-UI-02170-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DREAM STEAM CARPET CLEAN INC

Employer

OC: 11/10/19

Claimant: Respondent (1)

Iowa Code Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the quarterly statement of charges that was mailed on February 7, 2020 for benefits paid to the claimant for the fourth quarter of 2019. After due notice was issued, a hearing was held by telephone conference call on April 23, 2020. Claimant Jeremy Fister participated. Beth Dieleman represented the employer. Exhibits 1 through 5 and were received into evidence. The administrative law judge took official notice of the database readout (DBRO).

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 November 13, 2019, Iowa Workforce Development mailed a notice of claim concerning the above claimant to the employer's address of record. The notice of claim noted the employer's maximum liability on the claim as \$14,170.00, a figure that was somewhat less than one-third of the \$45,032.81 in base period wages the employer had reported as wages paid to the claimant during the third and fourth quarters of 2018 and the first and second quarters of 2019. The notice of claim contained a warning that any protest must be *postmarked or faxed* by the due date set forth on the notice of claim, which was November 25, 2019. The back side of the notice of claim form provided three fax numbers and a mailing address the employer could use to submit the protest to the Unemployment Insurance Service Center. *The notice of claim form did not include an email address to use to submit a protest.* The notice of claim was received at the employer's address of record in a timely manner on or before November 15, 2019. The employer uses a third-party professional employer organization (PEO), Focus OneSource, for unemployment insurance matters. The employer's address of record is the address for the PEO.

On November 15, 2019, Beth Dieleman of Focus OneSource completed the employer's protest information on the notice of claim form and sent an email to uiclaimshelp@iwd.iowa.gov.

Ms. Dieleman attempted to attach the employer's protest to the email. Ms. Dieleman received an automated email response: "Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server." Ms. Dieleman did not follow up to find out what exactly the automated message meant or to confirm receipt of the protest. Iowa Workforce Development has no record of receiving an employer protest.

Ms. Dieleman advises that she had a conversation with an Iowa Workforce Development representative "in the middle of 2019" and was advised to submit responses to notices of claims by emailing them to uicclaimshelp@iwd.iowa.gov. Ms. Dieleman advises that she sought this alternative route of submitting protests because Focus OneSource was having difficulty receiving confirmation of protests submitted by fax. Ms. Dieleman does not know the name of the person she spoke with at Iowa Workforce Development regarding this alternative means of submitting protests. The uicclaimshelp@iwd.iowa.gov email inbox is a catch-all email address not intended to be--and not promoted as--a means by which employer protests may be submitted to the Unemployment Insurance Service Center. Hence, omission of the email address from the notice of claim form that is sent to employers.

After Ms. Dieleman sent her email to the uicclaimshelp@iwd.iowa.gov, neither the PEO nor the employer followed up on the matter until after the PEO received the quarterly statement of charges that was mailed on February 7, 2020. The PEO received the quarterly statement of charges in a timely manner. The quarterly statement of charges contained a charge for \$2,230.00 in benefits paid to the claimant for the fourth quarter of 2019. Iowa Workforce Development had paid benefits totaling \$2,778.00 for the fourth quarter of 2019, but did not include \$545.00 direct-deposit initiated on 12/30/19 in the quarterly statement of charges figure. On March 6, 2020, Focus OneSource mailed the employer's appeal from the quarterly statement of charges to the Appeals Bureau. The mailing was postmarked March 6, 2020.

REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Administrative Code Rule 871-24.8(2)(a) and (b) provide as follows:

- (2) Responding by employing units to a notice of the filing of an initial claim or a request for wage and separation information and protesting the payment of benefits.

a. The employing unit which receives a Form 65-5317, Notice of Claim, or a Form 68-0221, Request for Wage and Separation Information, must, within ten days of the date of the notice or request, submit to the department wage or separation information that affects the individual's rights to benefits, including any facts which disclose that the individual separated from employment voluntarily and without good cause attributable to the employer or was discharged for misconduct in connection with employment.

b. The employing unit may protest the payment of benefits if the protest is postmarked within ten days of the date of the notice of the filing of an initial claim. In the event that the tenth day falls on a Saturday, Sunday or holiday, the protest period is extended to the next working day of the department. If the employing unit has filed a timely report of facts that might adversely affect the individual's benefit rights, the report shall be considered as a protest to the payment of benefits.

Iowa Administrative Code Rule 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 via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

c. If transmitted by any means other than those outlined in paragraphs 24.35(1)"a" and "b", on the date it is received by the division.

Iowa Administrative Code Rule 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.

The Iowa Workforce Development website provides employers with the following instructions with regard to protesting unemployment insurance claims:

NOTICE TO EMPLOYERS

If an unemployment insurance (UI) claim is determined monetarily eligible, a Notice of Claim (form 65-5317) is sent to the claimant's most recent employer and to all employers in the claimant's base period. The employer may protest payment of benefits if the employer feels the individual is not qualified.

To protest a UI claim, or to report payments applicable to the days/weeks following the effective date of the UI claim, the employer must mail or fax the notice to IWD stating the reasons for protest and sign the notice. The employer's signature must be on the protest or it may be rejected by IWD. The response must be postmarked or received within 10 days from the date it was mailed to the employer.

The mailing address and fax numbers are listed on the Notice of Claim letter. Please do not return the original if faxing.

The employer's protest was untimely. The employer did not comply with the notice of claim instructions to *mail or fax* the protest by the November 25, 2019 protest deadline. The employer had a reasonable opportunity to properly file a timely protest by *mailing or faxing* the protest materials pursuant to the instructions on the notice of claim form. The PEO's decision to respond to the notice of claim by email was not authorized by Iowa Workforce Development. The weight of the evidence indicates Iowa Workforce Development never received a protest by email or otherwise. When a protest is received, the rules require that Workforce Development mail to the parties notice of a telephone fact-finding interview, that such a conference call be held, and then a determination be made regarding the protest. Iowa Admin. Code r. 871 - 24.9. Regular proceeding by the Agency would have meant that the protest would be retained, a protest would be docketed, a fact finding interview would be scheduled and held, and a decision would be issued. None of this occurred. Had a protest been received, the regular process should have been triggered, but it was not. "The proceedings of all officers and courts of limited and inferior jurisdiction within the state shall be presumed regular". Iowa Code §622.56; accord *City Of Janesville v. McCartney*, 426 N.W.2d 785 (Iowa 1982). Thus, there is a presumption, from Workforce Development having no record of a protest, that no protest was received by Workforce Development. This is not an absolute presumption, but is instead a presumption that may be overcome with sufficiently probative evidence. The employer presented insufficient evidence overcome the presumption. The employer is not helped by the fact that after it supposedly emailed a protest on November 15, 2019 it did nothing for three months.

The employer representative presented insufficient evidence to establish that anyone at Iowa Workforce Development gave blanket authorization in mid-2019 to submit protests by email to the uicclaimshelp@iwd.iowa.gov. Submission of a protest by email would be contrary to the instructions on the notice of claim form and contrary to the guidance published on the Iowa Workforce Development website.

The employer's failure to file a timely protest was not attributable to Workforce Development or the United States Postal Service. Accordingly, 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 remain in effect.

Iowa Code section 96.7(2)(a)(6) provides:

2. Contribution rates based on benefit experience.

a. (6) Within forty days after the close of each calendar quarter, the department shall notify each employer of the amount of benefits charged to the employer's account during that quarter. The notification shall show the name of each individual to whom benefits were paid, the individual's social security number, and the amount of benefits paid to the individual. An employer which has not been notified as provided in section 96.6, subsection 2, of the allowance of benefits to an individual, may within thirty days after the date of mailing of the notification appeal to the department for a hearing to determine the eligibility of the individual to receive benefits. The appeal shall be referred to an administrative law judge for hearing and the employer and the individual shall receive notice of the time and place of the hearing.

Because the employer had notice of the claim on or before November 15, 2019, well before the quarterly Statement of Charges that was mailed on February 7, 2020, the administrative law judge need not further address the employer's appeal from the quarterly statement of charges.

DECISION:

The employer did not file a timely protest. The claimant is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits.



James E. Timberland
Administrative Law Judge

May 5, 2020
Decision Dated and Mailed

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