

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

CJ L BRITTAIN
Claimant

APPEAL NO. 19A-UI-04028-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IMAGE INC
Employer

OC: 04/21/19
Claimant: Respondent (1)

Iowa Code section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 14, 2019, reference 03, 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 June 11, 2019. Claimant CJ Brittain did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. Kevin Gracey represented the employer. Exhibits 1 and 2 and Department Exhibits D-1 through D-4 were received into evidence.

ISSUES:

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: The employer is a Molly Maids franchise located in Ankeny. Tammy Huinker is the business owner. At all relevant times, Kevin Gracey has been the employer's Office Manager. Ms. Huinker prohibits Mr. Gracey and other staff from opening incoming mail and has all mail routed to her in-house mailbox so that she can personally review and respond to the correspondence. On April 21, 2019, Ms. Huinker underwent a surgical procedure for a pinched nerve in her back. Shortly thereafter, Ms. Huinker was discharged from the hospital to home. During her recovery period, Ms. Huinker remained in communication with Mr. Gracey, performed payroll work from home, and limited her time at the Molly Maid office to brief periods on Fridays.

On April 26, 2019, Iowa Workforce Development mailed a notice of claim concerning the claimant CJ Brittain to the employer's address of record. The address of record corresponds to the business location in Ankeny. The notice of claim was delivered to the address of record in a timely manner within a day or two of being mailed. The employer's staff did not open the time-sensitive correspondence and instead routed the correspondence to Ms. Huinker's in-house mailbox pursuant to her previous instructions. 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 May 6, 2019. On the morning of May 10, 2019, Ms. Huinker opened and reviewed the

notice of claim correspondence. Ms. Huinker noted that the protest was past due. Ms. Huinker directed Mr. Gracey to submit a protest to Iowa Workforce Development. That same morning, Mr. Gracey electronically transmitted a protest to Iowa Workforce Development. Iowa Workforce Development received the protest on May 10, 2019 and marked it as a late protest.

Subsequent to her separation from the employment, and prior to establishing the original claim for benefits that was effective April 21, 2019, the claimant earned 10 times her weekly benefit amount from additional insured employment.

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 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 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 May 10, 2019 protest was untimely. The evidence establishes that the employer had a reasonable opportunity to file a timely protest. The evidence establishes that the business owner, Ms. Huinker, failed to take reasonable steps to ensure that time-sensitive correspondence was reviewed and responded to in her absence. Ms. Huinker employed an office manager, Mr. Gracey, with whom she communicated about other business matters during her absence from the workplace. A reasonable person in the employer's circumstances would have delegated to Mr. Gracey the responsibility to ensure that time-sensitive correspondence was reviewed and responded to in a timely manner. Because the employer had a reasonable opportunity to file a timely protest, and because the 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, there is not good cause to treat the late protest as a timely protest. Because the protest was untimely, 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, 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.

DECISION:

The May 14, 2019, reference 03, 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