

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALMA P VELASCO
Claimant

APPEAL NO. 09A-UI-11840-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AIMEE ENFIELD
JAZ IT UP
Employer

OC: 07/19/09
Claimant: Respondent (1)

Iowa Code Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 12, 2009, reference 03, decision that allowed benefits and that found the employer's protest untimely. After due notice was issued, a hearing was held by telephone conference call on September 1, 2009. Claimant Alma Velasco participated. Exhibit One was received into evidence. The administrative law judge took official notice of the Agency's record of wages reported for the claimant since she separated from the employer, which records indicate that the claimant earned in excess of 10 times her weekly benefit amount from insured work between her separation from the employer and the time she established her claim for unemployment insurance benefits.

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 July 21, 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 July 31, 2009. July 31, 2009 was a Friday.

The employer, Aimee Enfield, had left for Colorado on July 22, 2009, had closed her business while she was gone, and had made arrangements for the United States Postal Service to hold her mail until she returned. On Sunday, August 2, 2009, Ms. Enfield returned to Iowa.

On Monday, August 3, Ms. Enfield collected her accumulated mail from the post office. The notice of claim was part of the waiting mail. The notice of claim bore no indication that it has been delayed or misdirected before arriving at its intended destination. On August 3, Ms. Enfield completed the employer's protest information on the notice of claim form and faxed to Workforce Development. In the absence of available administrative file materials indicating

otherwise, the evidence indicates that Workforce Development received the employer's protest on August 3, 2009.

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 but the notice of claim arrived at post office in a timely manner—the destination the employer had selected for her mailed correspondence--prior to the deadline for protest, but the employer was not available to receive it and act upon it. The evidence establishes 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. 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 stand and remain in full force and effect.

DECISION:

The Agency representative's August 12, 2009, reference 03, 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