

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

KATHLEEN SCHLOTFELDT
Claimant

APPEAL NO. 19A-UI-04706-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FRONTIER MGMT CORP
Employer

OC: 04/28/19
Claimant: Respondent (1)

Iowa Code Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed an appeal from the June 6, 2019, reference 03, decision that allowed benefits to the claimant provided he 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 5, 2019. Claimant Kathleen Schlotfeldt did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. Nallely Williamson represented the employer. Exhibits 1 and 2 and Department Exhibit D-1 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 has elected to receive electronic notice of unemployment insurance claim via the SIDES/Sofia system in lieu of receiving notice by mail. On May 3, 2019, Iowa Workforce Development created a notice of claim concerning claimant Kathleen Schlotfeldt, posted the notice of claim to the employer's SIDES/Sofia account and transmitted an email notice to the employer's email address of record: ahill@frontierhg.com. That email address corresponds to Angie Hill, the employer's former full-time human resources manager and current part-time human resources manager. The notice of claim contained a May 16, 2019 deadline for the employer's protest. There is no reasonable basis to conclude that the notice transmitted to the employer was not delivered in a timely manner to the email address the employer had provided to Iowa Workforce Development for such purposes. The employer did not file a protest by the May 16, 2019 deadline. On June 3, 2019, the notice of claim pertaining to Ms. Schlotfeldt came to the attention of the employer's new full-time human resources manager, Nallely Williamson. On that day, Ms. Hill forwarded to Ms. Williamson the email notice she had received from Iowa Workforce Development regarding a different claimant's claim for benefits. On June 3, 2019, Ms. Williamson contacted Iowa Workforce Development by email to request the PIN for the

employer's SIDES/Sophia account. On June 3, 2019, Ms. Nallely transmitted an electronic protest of Ms. Schlotfeldt's claim to Iowa Workforce Development via the SIDES system. Iowa Workforce Development received the protest on June 3, 2019.

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.

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.

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 received timely and appropriate notice of the claim and had a reasonable opportunity to file a timely protest by the protest deadline. The protest was due on May 16, 2019, but the employer did not file its protest until June 3, 2019. The evidence establishes that the employer's failure to file a timely protest was attributable to the employer's internal operations and 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 remain in effect.

DECISION:

The June 6, 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