

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DARRYL K AUSTIN
Claimant

APPEAL NO. 19A-UI-05295-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROC TAPROOM INC
Employer

OC: 06/02/19
Claimant: Respondent (1)

Iowa Code Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 27, 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 26, 2019. The claimant did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. Juliet Diaz represented the employer. Exhibit 1 and Department Exhibit D-1 were received into evidence at the time of the hearing. The administrative law judge reopened the record for the limited purpose of taking official notice of the Agency's administrative record of the email address the employer designated as the email address to which notice of SIDES postings should be sent and for the purpose of receiving copies of email correspondence between Ms. Diaz and Iowa Workforce Development, which material was received into the record as Exhibit 2.

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: The employer has elected to receive electronic notice of claims through the SIDES web-based system. The employer designated jessica@parcoltd.com as the email address to which Iowa Workforce Development should send notice to the employer that a new notice of claim was posted to the employer's SIDES account. The Jessica in question is a ROC Taproom, Inc. / Parco Ltd. Employee. On the evening of June 7, 2019, Iowa Workforce Development created a notice of claim regarding claimant Darryl Austin. The notice of claim was promptly posted to the employer's SIDES account and the email notice was promptly sent to the email address designated by the employer. The notice of claim posted to SIDES provided June 20, 2019 as the deadline for the employer's response to the notice of claim.

On April 15, 2019, Juliet Diaz, Human Resources, became responsible for responding to notice of claims on behalf of the employer. However, the employer did not take appropriate steps via the SIDES system or by contacting the SIDES administrator to change the email address to which notice of SIDES postings should be sent.

On June 24, 2019, Ms. Diaz accessed the employer's SIDES account for unrelated matter and noted the notice of claim regarding Mr. Austin. Prior to accessing the SIDES account on June 24, 2019, the employer had most recently checked its SIDES account on June 5 or 6, 2019. Ms. Diaz filed a protest via the SIDES system on June 24, 2019.

The employer had direct contact with Iowa Workforce Development during and after April 2019 for purposes other than addressing the SIDES account, but to date has not taken appropriate steps to update the email address to which notice of SIDES postings should be sent.

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 § 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 employer's protest was untimely. The delay in filing the protest is attributable to the employer and not attributable to Iowa Workforce Development or to the United States Postal Service. Iowa Workforce Development posted the notice of claim to the employer's SIDES account in a timely manner and sent timely email notice of the posting to the email address designated by the employer for that purpose. The employer had a reasonable opportunity to respond to the notice of claim in a timely manner. The employer's failure to take steps in responding to the email prompt sent to the email address designated by the employer, and the employer's failure to take appropriate steps to update that email address to be used for notice of SIDES postings, does not constitute good cause to treat the late protest as a timely protest. 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 27, 2019, reference 03, decision is affirmed. The employer's protest was untimely. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

The employer may update its email address of record for purposes of receiving notice of SIDES postings by contacting the Iowa Workforce Development SIDES administrator at iwd-sidesinfo@iwd.iowa.gov.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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