

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JENNA L BATES**  
Claimant

**APPEAL NO. 16A-UI-07223-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TENCO INDUSTRIES INC**  
Employer

**OC: 06/05/16**  
**Claimant: Respondent (1)**

Iowa Code Section 96.6-2 - Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer filed an appeal from the June 24, 2016, 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 July 19, 2016. Claimant Jenna Bates participated. Angela Lennie represented the employer. Exhibits One through Five were received into evidence. The administrative law judge took official notice of the agency's administrative record of benefits paid to the claimant for insured work subsequent to her separation from this employer and prior to her claim for unemployment insurance benefits.

**ISSUE:**

Whether the employer's protest was timely.

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: On June 9, 2016, Iowa Workforce Development mailed a notice of claim concerning claimant Jenna Bates 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 June 20, 2016. The notice of claim was received at the employer's address of record on June 13, 2016. Angela Lennie, Human Resources Director, was the employer representative responsible for responding to the notice of claim. Ms. Lennie was out of the office from June 13, 2016 through June 20, 2016 to provide music instruction as part of an annual commitment to the Missouri Arts Council. Though Ms. Bates has an assistant, Desiree Bradley, the employer did not have Ms. Bradley or another staff member review and respond to time sensitive correspondence in Ms. Lennie's absence. On June 21, 2016, Ms. Lennie returned to work. On that day, Ms. Lennie completed the employer's protest information on the notice of claim form and faxed the form to Workforce Development. The Unemployment Insurance Service Center received the employer's faxed protest on June 21, 2016.

After claimant Jenna Bates left Tenco Industries in October 2015, and before she established her claim for unemployment insurance benefits, she worked in worked in and was paid wages for insured work that exceeded 10 times her weekly benefit amount.

**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 by any means other than the United States postal service 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 employer received the notice of claim in a timely manner on June 13, 2016. At that point, the employer had a full week in which to file a protest by the protest deadline. The administrative law judge notes that the employer actually had 11 days from the mailing date of the notice of claim in which to file a timely protest, rather than the standard 10-day period. This was because the 10th day would otherwise have fallen on a Sunday. The employer had a reasonable opportunity to file a timely protest, but failed to do so. The late filing of the protest was attributable to the employer's internal operations and the employer's decision not to delegate responsibility for responding to time-sensitive correspondence to other staff during Ms. Lennie's week-long absence. The late filing of the protest was not attributable to Workforce Development error or misinformation or delay or other action of the United States Postal Service. Accordingly, there is not good cause to treat the late protest as a timely protest. Because the protest was untimely, the employer has failed to preserve its right to challenge liability for benefits paid to the claimant and has failed to preserve its right to challenge the claimant's eligibility for benefits in connection with the October 2015 employment separation. 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, 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 24, 2016, 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.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs