

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**SUZANNA D HOST**  
Claimant

**CLEAN IOWA INC**  
Employer

**APPEAL NO. 20A-UI-03107-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/15/20**  
**Claimant: Respondent (4)**

Iowa Code Section 96.6-2 - Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the April 6, 2020, reference 04, 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 May 7, 2020. Claimant Suzanna Host did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. Greg McCall represented the employer and presented additional testimony through Kevin Anthofer. Exhibit 1 and Department Exhibits D-1 and D-2 were received into evidence. The administrative law judge took official notice of the Agency's administrative record of wages reported for the claimant for the period subsequent to her separation from this employer (WAGEA).

**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: Clean Iowa, Inc. has elected to receive electronic notice of unemployment insurance claims and to electronically respond to claims through the State Information Data Exchange System (SIDES). On March 18, 2020, Iowa Workforce Development created an electronic notice of claim concerning claimant Suzanna Host and posted the claim to the appropriate SIDES account. At approximately 1:00 a.m. on March 19, 2020, Iowa Workforce Development sent an email message to the email address designated by the employer to alert the employer to the notice of claim posted to the employer's SIDES account and to alert the employer to the March 30, 2020 protest deadline. The employer-designated email address for purposes of receiving notice of claims was an email address assigned to Julie Host. Julie Host had separated from the employer at the end of 2019.

In March 2020, the employer was mindful that a number of employees had submitted claims for unemployment insurance benefits in connection with the COVID-19 pandemic. Toward the end

of March 2020, the employer discovered it did not have immediate access to Julie Host's email account or emails sent to that account. The employer also discovered that it lacked the PIN number it needed to access and use its SIDES account. On March 27, 2020, the employer gained access to Julie Host's email account and saw the email notice of the SIDES posting of the notice of claim pertaining to Suzanna Host.

Beginning on March 27, 2020, the employer attempted to contact Iowa Workforce Development for assistance in accessing the SIDES account so the employer could review and respond to the electronic notice of claim by the protest deadline. The employer was unable to reach the appropriate Workforce Development representative despite multiple attempts to do so.

On April 1, 2020, the employer was finally able on its own to access the SIDES account and to transmit a response to the notice of claim concerning Suzanna Host. The employer's protest was received by Workforce Development on April 1, 2020.

Subsequent to her 2018 separation from employer, and prior to her March 15, 2020 claim for unemployment insurance benefits, the claimant, Suzanna Host, worked in additional employment for which she was paid at least 10 times her weekly unemployment insurance benefit amount.

#### **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.

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.

Iowa Administrative Code Rule 871-24.8(2)(a) and (b) provide as follows:

- (2) Responding by employing units to a notice of the filing of an initial claim or a request for wage and separation information and protesting the payment of benefits.

- a. The employing unit which receives a Form 65-5317, Notice of Claim, or a Form 68-0221, Request for Wage and Separation Information, must, within ten days of the date of the notice or request, submit to the department wage or separation information that affects the individual's rights to benefits, including any facts which disclose that the individual separated from employment voluntarily and without good cause attributable to the employer or was discharged for misconduct in connection with employment.

b. The employing unit may protest the payment of benefits if the protest is postmarked within ten days of the date of the notice of the filing of an initial claim. In the event that the tenth day falls on a Saturday, Sunday or holiday, the protest period is extended to the next working day of the department. If the employing unit has filed a timely report of facts that might adversely affect the individual's benefit rights, the report shall be considered as a protest to the payment of benefits.

Iowa Administrative Code Rule 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 Administrative Code Rule 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.

The employer's protest was filed on April 1, 2020, when Iowa Workforce Development received the electronically transmitted protest.

The evidence in the record establishes good cause to treat the employer's late protest as a timely protest. The electronic notice of claim was posted to the employer's SIDES account in a timely manner. The accompanying email notice of the posting was transmitted to the employer-designated email address in a timely manner. During the protest period, the employer learned of the notice of claim, discovered it could not access the SIDES system to respond to the claim, and took timely and reasonable steps to enlist assistance from Iowa Workforce Development to gain access to the SIDES account. Iowa Workforce Development contributed to the late filing of the protest. During the period when the employer was seeking assistance to access the SIDES account, Iowa Workforce Development had pulled staff throughout the Agency away from their regular duties to assist with the extremely high number of new unemployment insurance claims prompted by the COVID-19 pandemic. This reassignment of IWD staff hindered the employer's ability to gain timely access to the SIDES account so the employer could file a protest by the March 30, 2020 protest deadline. The employer was eventually able to gain access on its own, but not until April 1, 2020. Once the employer had access to the SIDES account, the employer promptly transmitted its protest of the claim. The employer did not unreasonably delay filing the protest.

Subsequent to her 2018 separation from this employer, and prior to her March 15, 2020 claim for unemployment insurance benefits, the claimant, Suzanna Host, requalified for unemployment insurance benefits through additional employment for which she was paid at least 10 times her weekly unemployment insurance benefit amount. See Iowa Code section 96.5(1)(g) (regarding requalification).

Based on the employer's timely protest and the claimant's requalification for benefits subsequent to the 2018 separation, the claimant is eligible for benefits provided she meets all other eligibility requirements and the employer's account shall not be charged for benefits. The wage credit in the amount of \$47.99 for the fourth quarter of 2018 shall be charged to the unemployment compensation fund.

**DECISION:**

The April 6, 2020, reference 04, decision is modified in favor of the employer with no adverse impact on the claimant. The employer's protest was timely. The claimant is eligible for benefits, provided she meets all other eligibility requirements. The employer's account shall not be charged. The wage credit in the amount of \$47.99 for the fourth quarter of 2018 shall be charged to the unemployment compensation fund.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in dark ink on a light-colored background.

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James E. Timberland  
Administrative Law Judge

May 7, 2020  
Decision Dated and Mailed

jet/scn