

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON J KROLL
Claimant

APPEAL NO. 08A-UI-05197-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA AG LLC
Employer

OC: 05/11/08 R: 02
Claimant: Respondent (1)

Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

Iowa Ag, Inc., filed a timely appeal from the May 30, 2008, reference 04, decision that allowed benefits and found the employer's protest untimely. After due notice was issued, a hearing was held by telephone conference call on June 16, 2008. The claimant did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. The employer participated through Betty Etnier, Payroll Clerk. The administrative law judge took official notice of the Agency's administrative records that indicate the claimant has requalified for benefits by earning ten times his weekly benefit amount since separating from the employment. Department Exhibit D-1 was received into evidence.

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: Claimant's notice of claim was mailed to the employer's address of record on May 14, 2008. 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 May 27, 2008. The greater weight of the evidence indicates that the notice of claim was received at the employer's address of record in a timely fashion, prior to the deadline for protest. Betty Etnier, Payroll Clerk, received the notice of claim into her possession on May 27, 2008, the day the protest was due. Ms. Etnier did not collect the notice of claim from the mailbox and does not know how long the notice of claim was in the employer's possession before it was routed to her. Ms. Etnier does not recall whether the notice of claim was still in the envelope or whether it had been removed from the envelope. On May 28, 2008, Ms. Etnier completed the employer's protest information on the notice of claim form. Ms. Etnier thinks she mailed the document on May 28. The employer's protest was received at the Workforce Development Unemployment Insurance Service Center on May 28, 2008, which suggests the protest was faxed, not mailed.

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 that court in that decision 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 has not shown any good cause for not complying with the jurisdictional time limit. Therefore, the administrative law judge is without jurisdiction to entertain any appeal regarding the separation from employment.

The evidence in the record establishes that the employer failed to file a timely protest. The greater weight of the evidence indicates that the employer received the notice of claim in a timely fashion, prior to the May 27, 2008 deadline. The greater weight of the evidence indicates that any delay in filing the protest resulted from the employer's delay in routing the notice of claim to the employer's payroll clerk. The evidence establishes that the employer's failure to file a timely protest was not attributable to Agency error or misinformation or delay or other action of the United States Postal Service. Accordingly, the administrative law judge lacks jurisdiction to make a 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 May 30, 2008, reference 04, 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/css