

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KENNETH E DUNN**

Claimant

**APPEAL NO. 17A-UI-04681-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TOWN CENTER SUPER VALU**

Employer

**OC: 10/02/16**

**Claimant: Respondent (1)**

Iowa Code section 96.6-2 - Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the April 28, 2017, reference 02, decision that allowed benefits to claimant Kenneth Dunn 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 May 22, 2017. Claimant Kenneth Dunn participated. Randy Grupe represented the employer and presented additional testimony through Tyler Seifert. Exhibits 3 and 4 were received into evidence. The administrative law judge took official notice of the April 28, 2017, reference 02, decision.

**ISSUE:**

Whether there is good cause to deem the employer's late protest a timely protest.

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: Town Center Super Valu is located at 500 Highway 4 South in Trimont, Minnesota, zip code 56176. Though that is the business location, the employer receives its mail at two local post office boxes. The store receives the bulk of its mail at Post Office Box 310, which the corporation, Town Center, Inc., receives its mail, including legal correspondence, at Post Office Box 6. Claimant Kenneth Dunn lives in Spirit Lake, Iowa and established an Iowa original claim for benefits that was effective October 2, 2016. After Mr. Dunn established the original claim, he became employed by Town Center Super Valu as General Manager. Mr. Dunn separated from the employment on March 17, 2017. Mr. Dunn then established an additional claim for benefits that was effective March 19, 2017.

On March 30, 2017, Iowa Workforce Development mailed a notice of claim to Town Center, Inc., at 500 Hwy 4 South, Trimont, MN 56176. The United States Postal Service did not deliver the correspondence to the business location. Instead, the Postal Service delivered the correspondence to the store's post office box. The notice of claim indicated on its face the employer's protest in response to the notice of claim must be postmarked by April 10, 2017 or received by Workforce Development by that date.

On April 11, 2017, Assistant Manager Tyler Seifert went to the Trimont Post Office to collect the store's mail. This was the first time anyone from the store had gone to the Post Office to collect the store's mail since Mr. Dunn's March 17, 2017 separation. Included in waiting mail was the notice of claim that Iowa Workforce Development had mailed on March 30, 2017. Mr. Seifert opened and reviewed the notice of claim. Mr. Seifert did not note the due date on the notice of claim form. Mr. Seifert discarded the envelope in which Iowa Workforce Development had mailed the notice of claim. Mr. Seifert forwarded the notice of claim to Randy Grupe, Town Center, Inc. Board President. On April 12, 2017, Mr. Grupe completed the employer's protest information on the notice of claim form and transmitted it to Workforce Development. While Mr. Grupe asserts he emailed the notice of claim to Iowa Workforce Development, the notice of claim form indicated that the document should be mailed or faxed. While the April 28, 2017, reference 02, decision references the protest being submitted on February 24, 2017, that date is prior to the mailing date of the notice of claim and is clearly erroneous. At the time of the appeal hearing, the Workforce Development record of receipt of the employer's protest was not available to the administrative law judge.

### **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 evidence in the record establishes that the employer's protest was untimely. The evidence in the record fails to establish that the notice of claim that was mailed on March 30, 2017 to the employer's business address was delayed at all in reaching the employer's Trimont Post Office Box. The evidence establishes that no one had checked the Post Office Box from the March 30, 2017 mailing date until April 11, 2017, when Mr. Seifert checked the Post Office Box for the first time since Mr. Dunn's March 17, 2017 separation from the employment. In other words, the employer had a reasonable opportunity to file a protest by the April 10, 2017 protest, but denied itself of that opportunity by not checking its Post Office Box for an unreasonably lengthy period. Because the Workforce Development record of receipt of the protest was unavailable to the administrative law judge at the time of the May 22, 2017 appeal hearing, the best evidence of when the protest was filed comes from the copy of the protest that the employer submitted for the hearing. That document indicates that Mr. Grupe completed the employer's protest information on April 12, 2017. In other words, the earliest the protest may have been submitted to Iowa Workforce Development was April 12, 2017, which was two days after the protest deadline. The mailing date of the April 28, 2017, reference 02, decision suggests that Workforce Development may have received or closer to April 27, 2017. The lower decision reference to February 24, 2017 as the date the protest was submitted is most like erroneous only with regard to the month. Rather than a protest date of February 24, 2017, the most likely protest date was April 24, 2017. Regardless of the exact date of protest, it is clear the protest was filed after the April 10, 2017 deadline had passed.

The evidence establishes that the employer's failure to file a timely protest was attributable to the employer's internal operations not attributable to Workforce Development error or misinformation or delay or other action of the United States Postal Service. Because the protest was untimely, the administrative law judge lacks jurisdiction to disturb the Agency's initial determination regarding the claimant's eligibility for benefits and the employer's liability for

benefits based on the separation from the employment. The Agency's initial determination of the claimant's eligibility for benefits and the employer's liability for benefits shall remain in effect.

Because the protest had been deemed untimely, the matter will not be remanded for a fact-finding interview.

The administrative law judge notes that Town Center, Inc./Town Center Supervisor Valu is not a base period employer for purposes of the claim year that Mr. Dunn established on October 2, 2016 and that will expire on September 29, 2017. Accordingly, the employer has not been charged and will not be charged for benefits paid to Mr. Dunn during the current benefit year. However, the employer may be charged for benefits paid to Mr. Dunn as part of a new benefit year beginning on or after September 30, 2017 if Mr. Dunn is then eligible for benefits and if the employer is at that point a base period employer. A base period employer is one for whom the claimant has worked during the first four of the last five completed calendar quarters before the quarter in which the claim is established.

**DECISION:**

The April 28, 2017, reference 02, 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 as outlined above.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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