

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MERCEDES M CLAY
Claimant

SEDONA STAFFING INC
Employer

APPEAL NO. 20A-UI-12114-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Respondent (1)

Iowa Code Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 24, 2020, 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 on November 24, 2020. Claimant Mercedes Clay did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. Chad Baker represented the employer. Exhibits 1, 2 and 3 were received into evidence.

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: On April 8, 2020, Iowa Workforce Development mailed a notice of claim concerning the above claimant to the employer's last-known 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 April 20, 2020. The notice of claim was received at the employer's address of record in a timely manner, prior to the deadline for protest. On April 15, 2020, Colleen McGuinty added the employer's protest information on the notice of claim form, signed the form, and dated the form. On April 16, 2020 someone from Sedona Staffing attempted to fax the protest to Iowa Workforce Development without success. Someone from Sedona Staffing placed a date-stamp on the notice of claim form indicating that that correspondence was mailed on April 16, 2020. However, the employer witness does not know who was responsible for mailing the correspondence, where it was mailed from, or whether the correspondence was in fact mailed. The witness speculates that correspondence could have been mailed in Colorado, where Ms. McGuinty current works from, or from the employer's corporate office in Moline, Illinois. Iowa Workforce Development did not receive and did not docket receipt of any such correspondence. The employer thereafter took no further action on the matter until August 19,

2020, when Ms. McGuinty contacted Iowa Workforce Development. IWD documented a protest filed on August 19, 2020.

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 evidence in the record fails to establish a timely protest. The employer received the notice of claim in a timely manner and had a reasonable opportunity to file a protest by the protest deadline. The employer attempted to fax the protest on April 16, 2020, but abandoned that effort without successful transmission of the protest. The employer had four more days in which to file a timely protest. The employer presented insufficient evidence, and insufficiently direct and satisfactory evidence, to prove that the protest was indeed placed in the mail on May 16, 2020 or at any time before the protest deadline expired. The employer witness lacked personal knowledge regarding the matter and could not say who, if anyone, could have mailed the correspondence or where the correspondence was placed in the mail. The employer presented insufficient evidence to prove that the protest ever left the employer's facility or was in fact placed in the mail stream. If IWD had received a protest, the normal process would have called for docketing the protest and moving forward with a fact-finding interview. The employer is well familiar with that process. The employer's case is not helped by the lack of follow up during the four months that followed the purported filing. IWD received and docketed a protest on August 19, 2020. The evidence in the record is insufficient to establish a late filing attributable to Workforce Development error or misinformation or delay or other action of the United States Postal Service. 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 September 24, 2020, 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.

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

James E. Timberland
Administrative Law Judge

December 7, 2020
Decision Dated and Mailed

jet/mh