

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PHILLIP SCHMITT
Claimant

APPEAL NO. 15A-UI-06721-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANTAGE INDUSTRIAL SYSTEMS LLC
Employer

OC: 05/17/15
Claimant: Respondent (1)

Iowa Code section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 4, 2015, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on an Agency conclusion that the employer's protest was untimely. After due notice was issued, a hearing was held by telephone conference call on July 20, 2015. Claimant Phillip Schmitt participated. Cassie Castillo, Office Manager, represented the employer. Department Exhibit D-1 was received into evidence.

ISSUES:

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 May 22, 2015, Iowa Workforce Development mailed a notice of claim concerning the above claimant 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 1, 2015. The notice of claim was received at the employer's address of record in a timely manner, prior to the deadline for protest. The employer's address of record is in Frankfort, Illinois. The employer witness does not know when the correspondence was received, but believes it was most likely received on May 26 or 27, 2015. The Memorial Day holiday had been on Monday, May 25, 2015. The employer discarded the envelope in which the notice of claim was mailed to the employer. The employer's protocol calls for the payroll assistant to open the correspondence and then forward the correspondence to the person who needs to respond to it. The payroll assistant only works on Mondays, Tuesdays and Thursdays. On June 2, 2015, Chris Housley, an Accounting Specialist/Payroll Supervisor located in Davenport, notified Cassie Castillo, an Office Manager located in Frankfort, that Ms. Housley had just received the notice of claim from the Frankfort payroll assistant that day. Ms. Housley asked Ms. Castillo whether she should still submit a protest in light of the fact that the protest would be late. Ms. Castillo directed Ms. Housley to submit the protest. On June 2, Ms. Housley

completed the employer's protest information on the notice of claim form and faxed the completed document to the Unemployment Insurance Service Center at Iowa Workforce Development. Workforce Development received the faxed protest on June 2, 2015 and marked it as late.

REASONING AND CONCLUSIONS OF LAW:

Iowa Admin. Code r. 871-24.35(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.

Iowa Admin. Code r. 871-24.35(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.

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.

The employer's protest was filed on June 2, 2015, when Iowa Workforce Development received the employer's protest by fax.

Another portion of Iowa Code section 96.6 that deals 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 establishes that the employer had a reasonable opportunity to file a timely protest. The weight of the evidence establishes that the employer received the notice of claim at its address of record on or about May 26-27, 2015, but that the employer's payroll assistant did not forward the correspondence to Ms. Housley until June 2, 2015. In other words, the late filing of the protest was attributable to a breakdown in the employer's internal processes. The evidence establishes that the employer's failure to file a timely protest was not 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 June 4, 2015, reference 01, decision is affirmed. The employer's protest was untimely. The claimant is eligible for benefits in connection with the May 2015 separation, provided he is otherwise eligible. The employer's account may be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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