

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WANDA L DANIEL
Claimant

APPEAL NO. 13A-UI-00277-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**KIRKWOOD COMMUNITY
COLLEGE – AREA 1**
Employer

**OC: 12/16/12
Claimant: Respondent (1)**

Iowa Code Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 8, 2013, reference 03, decision that allowed benefits and that found the employer's protest untimely. After due notice was issued, a hearing was held by telephone conference call on February 8, 2013. Claimant Wanda Daniel participated. Sheri Hlavacek, Human Resources Specialist, represented the employer. Department Exhibit D-1 was received into evidence. The administrative law judge took official notice of the agency's administrative record concerning wages reported for the claimant since her separation from the employment.

ISSUE:

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 December 20, 2012, Iowa Workforce Development mailed a notice of claim concerning claimant Wanda Daniel to the employer's address of record. The employer's address of record is a post office box in Cedar Rapids. 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 December 31, 2012. Workforce Development was open for business that day. The notice of claim was received at the employer's address of in a timely manner, prior to the deadline for protest. The employer, Kirkwood Community College, was closed for winter break from December 22, 2012 through January 1, 2013. Kirkwood reopened on January 2, 2013. At that time, Kirkwood central receiving processed and distributed the 10 days' worth of mail that had accumulated during the break. The notice of claim for Ms. Daniel was amongst the 10 days' worth of accumulated mail. The Kirkwood Human Resource Department received the notice of claim into its possession on January 3, 2013. On that day, Sheri Hlavacek, Human Resources Specialist, completed the employer's protest information on the notice of claim form and made an unsuccessful attempt to fax the protest to Iowa Workforce Development. Ms. Hlavacek successfully faxed the protest on January 4, 2013. The Unemployment Insurance Service Center received the faxed protest on January 4, 2013.

After claimant Wanda Daniel separated from Kirkwood in November 2011, and before she established the claim for unemployment insurance benefits that was effective December 16, 2012, she earned at least ten times her weekly benefit amount should insured employment.

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 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 employer's protest was filed on January 4, 2013, when the Unemployment Insurance Service Center received the faxed protest.

The employer's protest was untimely. The employer had a reasonable opportunity to file a timely protest. The protest was received at the employer's post office box in a timely manner, prior to the deadline for appeal. The notice of claim then sat for several days until the employer's central receiving department commenced processing and sorting 10-days' backlog of mail on January 2, 2013. The delay in filing the protest was not attributable to Iowa Workforce Development error or misinformation or delay or other action of the United States Postal Service. Instead, the delay was wholly attributable to the employer's decision to shut down mail processing and human resources operations during the academic break. Because the employer's protest was untimely, 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 employer's protest was untimely. The agency representative's January 8, 2013, reference 03, decision is affirmed. The agency's initial determination of the claimant's eligibility for benefits and the employer's liability for benefits shall stand.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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