

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI	
SUSAN R STANNARD Claimant	APPEAL NO. 17A-UI-06972-TNT
EDGEWOOD VETERINARY CLINIC Employer	ADMINISTRATIVE LAW JUDGE DECISION
	OC: 06/04/17 Claimant: Respondent (1)

Iowa Code Section 96.6(2) – Timeliness of Protests

STATEMENT OF THE CASE:

Edgewood Veterinary Clinic filed an appeal from a representative's decision dated July 6, 2017, reference 01, which allowed benefits to the claimant and found the employer's protest untimely. After due notice was issued, a hearing was held by telephone on July 26, 2017. Claimant did participate. The employer participated through Dr. Mark Houser, Veterinarian/Co-Owner. Department's Exhibit D1 was received into the hearing record.

ISSUE:

The issue is whether the employer protested the claim for benefits timely and whether good cause existed for late filing of the protest.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds: The claimant's notice of claim was mailed to the employer's address of record on June 12, 2017. 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 22, 2017. The notice of claim was delivered to the employer's business location by the U.S. Postal Service prior to the due date for filing a protest. On June 27, 2017, the employer faxed a protest on the claim of Susan Stannard to Iowa Workforce Development, that date is after the date noticed on the notice of claim filed.

Approximately two days after the due date for the employer to protest the claim for benefits, the employer discovered the notice of claim on a shelf nearby to the area where employees normally sort in-coming mail for the clinic. Although Dr. Houser noted that the due date had passed, the employer nevertheless made inquiries by telephoning Iowa Workforce Development. The agency confirmed to Dr. Houser that the time limit for protesting the claim of notice for benefits had already passed and information was given to Dr. Houser about filing an appeal.

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.

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.

In the case at hand, the notice of claim filed was mailed to the employer's address of record and received by the employer within ten days of the June 12, 2017 date when the notice was mailed to the employer's address of record. After being delivered to the employer and within the employer's custody, for reasons that are unknown, the form was misplaced and not discovered by the employer until after the 10-day statutory time limit for filing the protest had passed. After finding the notice of claim filed, the employer soon took action to protest the claim. However, the employer's protest was not received by Iowa Workforce Development until June 27, 2017, after the statutory time limit for filing a protest had expired.

Although sympathetic to the employer's situation, the administrative law judge concludes the employer failed to effect a timely protest within the time period prescribed by the Iowa Employment Security Law, and the delay was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the employer failed to effect a timely protest pursuant to Iowa Code section 96.6-2, and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the claimant's termination of employment. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979); *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979) and *Pepsi-Cola Bottling Company v. Employment Appeal Board*, 465 N.W.2d 674 (Iowa App. 1990).

DECISION:

The decision of the representative dated July 6, 2017, reference 01, is affirmed. The employer has failed to file a timely protest, and the decision of the representative shall stand and remain in full force and effect. Benefits are allowed, provided Susan Stannard satisfies all other conditions of eligibility.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

rvs/rvs