

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KYLE W BAUERKEMPER

Claimant

APPEAL NO. 17A-UI-00926-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TOM'S ELECTRIC & GRAIN EQUIPMENT

Employer

OC: 12/25/16

Claimant: Respondent (4)

Iowa Code Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed an appeal from the January 24, 2017, reference 01, decision that allowed benefits to the claimant 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 February 15, 2017. Claimant Kyle Bauerkemper did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. Marcy Muenchrath represented the employer. Exhibits 1 and Department Exhibit D-1 were received into evidence. The administrative law judge took official notice of the agency's administrative record of wages paid to the claimant for insured work subsequent to his separation from the above employer and prior to the December 25, 2016 unemployment insurance claim.

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 30, 2016, 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 January 9, 2017. 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 is a small business owned and operated by Tom and Marcy Muenchrath, husband and wife. On January 3, 2017, Mr. Muenchrath underwent hip replacement at a hospital in Omaha. Mrs. Muenchrath stayed with Mr. Muenchrath in Omaha to provide necessary support in connection with the hip replacement. On Friday, January 6, 2017, Mrs. Muenchrath brought Mr. Muenchrath home to Westphalia and continued to be preoccupied with caring for Mr. Muenchrath during his early recovery from hip replacement. On January 11, 2017, Ms. Muenchrath was able to return to the office and at that time became aware of the notice of claim. Ms. Muenchrath had left a family member in charge of monitoring incoming mail for checks only. Upon her return to the office,

Ms. Muenchrath opened, reviewed, and immediately responded to the notice of claim. Ms. Muenchrath completed the employer's protest information on the notice of claim form and faxed the form to Iowa Workforce Development on the morning of January 11, 2017. Workforce Development received the notice of claim at 10:18 a.m. on January 11.

After the claimant separated from the employer in September 2015, and before he established the claim for benefits that was effective December 25, 2016, he worked in insured work and was paid wages for insured work that exceeded ten times his weekly benefit amount.

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 good cause for the late filing of the protest two days beyond the filing deadline. The employer's preoccupation with dealing with a major medical procedure denied the employer a reasonable opportunity to file a protest by the protest deadline. The employer responded to the notice of claim as soon as the employer was able to respond to the notice of claim and immediately upon becoming aware of the notice of claim. There is good cause in the record to deem the late protest a timely protest. Because the evidence establishes a timely protest and because the claimant has requalified for benefits pursuant to Iowa Code Section 96.5(1)(g), the claimant remains eligible for benefits, provided he is otherwise eligible and the employer's account shall be relieved of liability for benefits paid to the claimant.

DECISION:

The January 24, 2017, reference 01, decision is modified as follows. There is good cause to deem the late protest timely. The claimant is eligible for benefits provided he meets all other eligibility requirements. The employer's account shall be relieved of liability for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs