

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MATTHEW T BALDWIN**

Claimant

**APPEAL NO. 11A-UI-02781-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BICKNESE, W E BALDWIN, J J**  
**WEST UNION VETERINARY CLINIC**  
Employer

**OC: 01/30/11**  
**Claimant: Respondent (1)**

Iowa Code section 96.6-2 - Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the February 24, 2011, reference 01, decision that allowed benefits to the claimant and that found the employer's protest untimely. After due notice was issued, a hearing was held by telephone conference call on March 30, 2011. The claimant did not respond to the hearing notice and did not participate. John Baldwin, D.V.M., represented the employer. Exhibit One and Department Exhibits D-1 and D-2 were received into evidence. The administrative law judge took official notice of the Agency's administrative record of wages reported for the claimant, which record indicates that the claimant earned more than ten times his weekly benefit amount from insured work between his separation from the employer and his application for unemployment insurance benefits.

**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 February 4, 2011, Iowa Workforce Development mailed a notice of claim concerning claimant Matthew Baldwin to the employer's address of record: 408 W. Bradford St., West Union, IA 52175. The employer had not done business at that address for several years. The employer has not taken appropriate steps to update its address of record with Iowa Workforce Development. The employer's business address is 508 W. Bradford St., West Union, IA 52175. The United States Post Office redirects the employer's mail to the business address. The employer is a partnership. Drs. W. E. Bicknese and John Baldwin are the partners. Dr. Bicknese ordinarily handled unemployment insurance matters for the partnership. In this case, the claimant was Dr. Baldwin's son. 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 February 14, 2011.

On February 21, 2011, Dr. Bicknese provided the notice of claim to Dr. Baldwin. Dr. Baldwin does not know when the clinic actually received the notice of claim or how long Dr. Bicknese had the notice of claim in his possession before he passed it along to Dr. Baldwin. There is nothing to suggest that the notice of claim was not received at the employer's clinic prior to the deadline for protest. On February 21, 2011, Dr. Baldwin completed the employer's protest information on the notice of claim and faxed the form back to Iowa Workforce Development. Dr. Baldwin did not realize at the time he prepared the protest that the protest was already a week late. The Unemployment Insurance Service Center received the protest on February 21, 2011.

## **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 evidence in the record establishes that the employer's protest was untimely. The evidence establishes that the employer, that is West Union Veterinary Clinic, had a reasonable opportunity to file a timely protest. 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 stand and remain in full force and effect.

Iowa Administrative Code rule 871 IAC 22.6 provides that any employer who changes the business address shall, within ten days after such change of address, give notice in writing to the department of that fact. The employer shall set forth in such notice the former address of the business, the new address, and the employer's own name, telephone number and present address. Such notification shall be on Form 60-0111, Employer's Notice of Change, or on Form 65-5313, Employer's Delinquency Notice.

A review of the correspondence between the employer and Iowa Workforce Development indicates that the employer's accountant, Bauer and Kloster, Inc., continues to use 408 W. Bradford St. as the employer's address of record when submitting required reports to Iowa Workforce Development. The most recent such report is dated July 10, 2010 and appears to have been signed by Dr. Bicknese on that date. Unless and until the employer takes the required steps to formally change its address of record, Iowa Workforce Development will continue to direct correspondence to the 408 W. Bradford Street address.

**DECISION:**

The Agency representative's February 24, 2011, reference 01, decision is affirmed. The Agency's initial determination of the claimant's eligibility for benefits and the employer's liability for benefits shall stand and remain in full force and effect.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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