

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAWN M HAGERMAN
Claimant

APPEAL NO. 14A-UI-05014-JTT

**ADMINISTRATIVE LAW JUDGE
NUNC PRO TUNC DECISION**

1-800 FLOWERS TEAM SERVICES INC
Employer

**OC: 04/07/13
Claimant: Respondent (2-R)**

Iowa Code Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed an appeal from the May 9, 2014, reference 05, decision that allowed benefits to the claimant provided she was otherwise eligible, that held the employer's account could be charged, and that found the employer's protest untimely. After due notice was issued, a hearing was held by telephone conference call on June 3, 2014. The claimant participated. Judy Beyar of Barnett Associates, Inc., represented the employer. Department Exhibits D-1 and D-2 were received into evidence. The parties stipulated that the employer had submitted a timely protest by fax on April 16, 2014.

ISSUE:

Whether the employer's protest of the claim for benefits was timely.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: On April 8, 2014, 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 April 18, 2014. The notice of claim was received at the employer's address of in a timely manner, prior to the deadline for protest. On April 16, 2014, the employer's representative faxed the employer's protest to Iowa Workforce Development. The Unemployment Insurance Service Center received the protest on April 16, 2014. The employer asserted in the protest that the claimant had not worked for the employer. On April 30, 2014, Iowa Workforce Development sent the employer additional correspondence indicating wages reported for the claimant and requesting further information.

The parties stipulate to the timeliness of the employer's protest.

REASONING AND CONCLUSIONS OF LAW:

Iowa Admin. Code r. 871-24.35(1) provides:

(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:

(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 timely. The employer's protest was received by fax on April 16, 2014, two days prior to the April 18, 2014 protest deadline. The erroneous information the employer included on the protest, that the claimant had not worked for the employer, did not prevent the employer's protest from being a timely protest. Workforce Development's April 30, 2014 correspondence to the employer did not negate the timeliness of the employer's protest.

This matter will be remanded to the Benefits Bureau for a fact finding to address the claimant's separation from the employment.

DECISION:

The Claims Deputy's May 9, 2014, reference 05, decision is reversed and set aside. The employer's protest was timely. This matter is remanded to the Benefits Bureau for a fact finding to address the claimant's separation from the employment.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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