

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DEBORAH J HAYNES**  
Claimant

**APPEAL NO. 09A-UI-18316-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BODY BY ZORT INC  
PLAZA FITNESS & TANNING**  
Employer

**OC: 05/10/09  
Claimant: Respondent (1)**

Iowa Code Section 96.6(2) - Timeliness of Protest  
Iowa Code Section 96.7(2)(a)(6) – Statement of Charges

**STATEMENT OF THE CASE:**

The employer filed an appeal from the December 4, 2009, reference 05, 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 16, 2010. The claimant did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. James Zortman, owner, represented the employer and presented testimony through Richard Nettleman, Manager, and Rick Christoffers, C.P.A.. The administrative law judge took official notice of the Agency's administrative record of wages earned by the claimant since her separation from the employment, which records indicate the claimant requalified for benefits by earning 10 times her weekly benefit amount prior to establishing her claim for unemployment insurance benefits. Exhibit One and Department Exhibits D-1 through D-4 were received into evidence.

**ISSUE:**

Whether the employer's protest of the claim for benefits was timely.  
Whether good cause existed for a late filing of the protest.

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: The claimant separated from the employer on June 28, 2008 and did not establish a claim for benefits until May 10, 2009. In the interim, the claimant earned 10 times her weekly benefit amount through insured employment.

On May 18, 2009, Iowa Workforce Development mailed a notice of claim regarding the claimant to the employer's last-known address of record: Body By Zort, Inc., Plaza Fitness & Tanning, 2326 Transit Ave., Sioux City, Iowa 51106. The administrative law judge notes this is the exact same address that appears on the late protest filed by the employer, the subsequent appeal filed by the employer, and as the return address on the envelope in which the appeal arrived. See Exhibit One. None of those documents recently provided by the employer references

Suite A as part of the employer's address. 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 May 28, 2009. James Zortman is the owner of the business in interest. Between April and September 2009, Mr. Zortman was an absentee owner and left daily operations to Richard Nettleton, the manager, Mr. Zortman had hired in December 2008 to run his business. Mr. Nettleton was still new in the position at the time the notice of claim was mailed to the employer on May 18, 2009. The way Mr. Zortman had his business affairs structured, Mr. Nettleton would not open business correspondence, including correspondence from Iowa Workforce Development. Instead, Mr. Nettleton would collect the unopened mail and Rick Christoffers, C.P.A., would stop in once a week to obtain Mr. Nettleton's necessary signature on checks et cetera and would collect the mail that had accumulated during the preceding week. Neither Mr. Nettleton nor Mr. Christoffers recalls seeing correspondence from Iowa Workforce Development in May 2009. But it is noteworthy that Mr. Nettleton did not document and does not recall when much more recent correspondence from Iowa Workforce Development, the quarterly statement of charges, was received by the employer. It is also noteworthy that Mr. Christoffers did not document and does not recall when he received the same more recent correspondence from Iowa Workforce Development. Nor did Mr. Christoffers, the employer's accountant, make a copy of the recent statement of charges for his own records. The employer did not have a good relationship with the business that occupied another suite of the same building until July 2009. The employer speculates—nine months after the notice of claim was mailed—that perhaps the Postal Service erroneously delivered the clearly marked correspondence from Workforce Development to the unrelated neighbor business instead. The weight of the evidence indicates that the notice of claim was received at the employer's place of business in a timely fashion, prior to the deadline for protest.

On November 9, 2009, Workforce Development mailed a quarterly statement of charges to the employer at the same address of record. The employer received the quarterly statement of charges in a timely manner. The quarter statement of charges included assessment to the employer's account for benefits paid to Ms. Haynes for the third quarter of 2009. This was the first statement of charges mailed to the employer in connection with Ms. Haynes' claim for unemployment insurance benefits. On December 3, 2009, the employer protested the charges by fax directed to the Workforce Development Chargeback Unit. The employer's protest was received on December 3, 2009. On December 4, 2009, Jan Thomas, Employer Liability Specialist with the Chargeback Unit mailed to the employer a copy of the notice of claim that had been mailed to the employer on May 18, 2009; a copy of the appealable decision she had entered on December 4, 2009 finding the employer's protest untimely; and a cover letter advising the employer it could appeal her decision. The employer was unable to locate these materials for the February 15, 2010 appeal hearing.

#### **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 that court in that decision 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 has not shown any good cause for not complying with the jurisdictional time limit. Therefore, the administrative law judge is without jurisdiction to entertain any appeal regarding the separation from employment.

The weight of the evidence in the record establishes that the employer received the notice of claim in a timely manner, but failed to file a timely protest. The evidence received at the appeal hearing revealed systematic deficiencies in the employer's correspondence handling practices that readily explained how the employer, or the employer's accountant, lost track of the notice of claim mailed to the employer on May 18, 2009. 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. The employer's speculation—nine months after the fact—that the correspondence might have been mis-delivered by the Postal Service is not supported by the weight of evidence, which indicates a much simpler explanation, the systematic deficiencies in the employer's correspondence handling practices. Because the employer's protest was untimely, the administrative law judge lacks jurisdiction to make a 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.

**DECISION:**

The Agency representative's December 4, 2009, reference 05, 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.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/pjs