

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VICTOR D HALL
Claimant

APPEAL NO. 14A-UI-03740-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHRISBRO III INC
Employer

**OC: 02/23/14
Claimant: Respondent (1)**

Iowa Code Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed an appeal from the April 2, 2014, reference 02, 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 found the employer's protest untimely. After due notice was issued, a hearing was held by telephone conference call on April 28, 2014. Claimant Victor Hall was not available at the number he had provided for the hearing and did not participate. Marcy Carlson represented the employer. 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 ten times his weekly benefit amount after separating from the employment. Department Exhibit D-1 was received into evidence. The administrative law judge took official notice of correspondence that the employer mailed to Workforce Development on March 27, 2014 in an attempt to change the employer's address of record. The administrative law judge took official notice of an Employer Contribution & Payroll Report submitted by the employer on January 1, 2014, which document includes an updated address for the employer.

ISSUES:

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 March 17, 2014, Iowa Workforce Development mailed a notice of claim concerning the above claimant to the employer's address of record. The employer's address of record at that time was 1720 Rapp Street, Rapid City, SD 57701. The employer operates a Hampton Inn hotel at that location. The employer used to house its corporate office at the Hampton Inn. At some point, the employer relocated its corporate offices from the Rapp Street location to 415 Main Street in Rapid City, SD 57701-2731. Because the employer continued to operate a business at the Rapp Street location, the employer did not arrange for the United States Postal Service to forward the employer's mail to the Main Street address. Instead, the employer expected the Hampton Inn management to deliver the corporate mail to the new corporate location on a

regular basis. 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 March 17, 2014. The weight of the evidence indicates that the notice of claim arrived at the Rapp Street address of record in a timely manner, prior to the deadline for protest.

On March 24, 2014, an administrative assistant assigned to the employer's corporate office faxed the notice of claim form to Mary Carlson, General Manager of the Hilton Garden Inn in Cedar Rapids. On that same day, Ms. Carlson completed the employer's protest information on the notice of claim form. On March 27, 2014, Ms. Carlson faxed the employer's protest to Workforce Development. Workforce Development received the protest that same day. Ms. Carlson does not know when the notice of claim was received at the employer's Rapp Street address of record or how long the notice of claim was at the Rapp Street address of record before it was forwarded to the corporate office on Main Street in Rapid City.

The employer has never followed the requirements set forth in Iowa Administrative Code r, 871 22.6 to formally change its address of record by completing and submitting the employer change of status form that is readily available on the Workforce Development website. On March 27, 2014, the employer's corporate office in Rapid City mailed a copy of the notice of claim to the Iowa Workforce Development Benefits Bureau with notation on that document that the employer wanted its address of record changed to 415 Main Street in Rapid City, SD. The notation further indicated that the March 27, 2014 correspondence was the employer's second request to change the address of record. The correspondence does not indicate when the earlier purported attempt occurred. On January 4, 2014, the employer filed an Employer's Contribution & Payroll Report that listed 415 Main Street in Rapid City as the employer's mailing address. That filing did not result in the employer's address of record being changed in the Workforce Development records. Workforce Development did change the address of record to the Main Street address in response to the March 27, 2014 correspondence.

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 untimely. The evidence establishes that the employer had a reasonable opportunity to file a timely protest. The evidence indicates that the employer had not taken the necessary steps to formally change the address of record from the Rapp Street address and that because of that failure on the part of the employer, Workforce Development correctly mailed the notice of claim to the Rapp Street address. The weight of the evidence indicates that the notice of claim was received at the address of record in a timely manner and was forwarded to the employer's corporate office at some later date. The evidence establishes that the employer's failure to file a timely protest was attributable to the employer's failure to follow the required steps to update its address of record and to the employer's internal relationship between the Rapp Street Hampton Inn and the employer's corporate office. The late filing of the 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.

DECISION:

The Claims Deputy's April 2, 2014, reference 02, decision is affirmed. The employer's protest was untimely. 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

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