

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

FILIFE L WESTMORELAND
Claimant

TEMP ASSOCIATES – IOWA INC
Employer

APPEAL NO. 20A-UI-01624-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/08/19
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 21, 2020, reference 04, 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 March 10, 2020. The claimant did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. Susan Watkins represented the employer. Exhibit 1 and 2 and Department Exhibits D-1 and D-2 were received into evidence.

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 December 16, 2019, 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 December 26, 2019. 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's address of record is in Muscatine. The claimant worked for the employer's Clinton branch. On December 21, 2019, Clinton Branch Manager Susan Watkins received the notice of claim. On December 23, 2019, Ms. Watkins added the employer's protest information to the notice of claim form and attempted to fax the notice of claim/protest to Iowa Workforce Development. The employer was having technical issues with its fax machine at the time. The employer subsequently addressed and resolved the fax machine issues. Iowa Workforce Development did not receive a protest from the employer regarding this claimant on December 23, 2019. The employer did not follow up on the matter until February 18, 2020, after the employer received a quarterly statement of charges that included charges for benefits paid to the claim. On February 18, 2020, the employer sent

an email message to protest the claim and attached the notice of claim the employer believed it had faxed on December 23, 2019.

REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Administrative Code Rule 871-24.8(2)(a) and (b) provide as follows:

- (2) Responding by employing units to a notice of the filing of an initial claim or a request for wage and separation information and protesting the payment of benefits.
 - a. The employing unit which receives a Form 65-5317, Notice of Claim, or a Form 68-0221, Request for Wage and Separation Information, must, within ten days of the date of the notice or request, submit to the department wage or separation information that affects the individual's rights to benefits, including any facts which disclose that the individual separated from employment voluntarily and without good cause attributable to the employer or was discharged for misconduct in connection with employment.
 - b. The employing unit may protest the payment of benefits if the protest is postmarked within ten days of the date of the notice of the filing of an initial claim. In the event that the tenth day falls on a Saturday, Sunday or holiday, the protest period is extended to the next working day of the department. If the employing unit has filed a timely report of facts that might adversely affect the individual's benefit rights, the report shall be considered as a protest to the payment of benefits.

Iowa Administrative Code Rule 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 via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

c. If transmitted by any means other than those outlined in paragraphs 24.35(1)"a" and "b", on the date it is received by the division.

Iowa Administrative Code Rule 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.

The weight of the evidence in the record establishes an untimely protest. When a protest is received, the rules require that Workforce Development mail to the parties notice of a fact finding interview, that a fact-finding interview be held, and then that a determination be made regarding the protest. Iowa Admin. Code r. 871 - 24.9. Regular proceeding by the agency would have meant that the protest would be retained, a protest would be docketed, a fact finding interview would be scheduled and held, and a decision would be issued. None of this occurred before the employer's protest was received by email on February 18, 2020. Had a protest been received prior to February 18, 2020, the regular process should have been triggered, but it was not. "The proceedings of all officers and courts of limited and inferior jurisdiction within the state shall be presumed regular". Iowa Code §622.56; accord *City Of Janesville v. McCartney*, 426 N.W.2d 785 (Iowa 1982). Thus, there is a presumption, from Workforce Development having no record of a protest prior to February 18, 2020 that no protest was received by Workforce prior to that date. This is not an absolute presumption, but is instead a presumption that may be overcome with sufficiently probative evidence. The employer did not present sufficient evidence to overcome the presumption. The employer has no fax confirmation documentation or phone record to support the notion that the employer successfully transmitted a protest on December 23, 2019 or at any time prior to February 18, 2020. The employer acknowledges there were technical issues with the employer's fax machine at the time the

employer thought it had transmitted a protest in December 2019. Even though the employer knew it could expect notice of a fact-finding interview after filing a protest, the employer waited eight weeks to inquire why a fact-finding interview had not been set. The protest was filed on February 18, 2020, well after the protest deadline. Because the late filing of the protest was not attributable to Iowa Workforce Development or to the United States Postal Service, there is not good cause to treat the late protest as a timely protest. Because the protest was untimely, 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 remain in effect.

DECISION:

The February 21, 2020, reference 04, decision is affirmed. The employer's protest was untimely. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn