

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER J LEE
Claimant

APPEAL NO. 07A-UI-06912-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMMUNITY CARE INC
Employer

OC: 06/24/07 R: 04
Claimant: Respondent (1)

Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

Community Care Inc. filed an appeal from the July 11, 2007, reference 03, decision that allowed benefits and found the protest untimely. After due notice was issued, a hearing was held by telephone on July 30, 2007. The claimant did not participate. The employer participated through Carol Wells, Human Resources Director. The administrative law judge took official notice of the Agency's administrative record that the claimant has earned 10 times her weekly benefit amount since separating from the employer. Department Exhibit D-1 and employer's Exhibit One were received into evidence.

ISSUES:

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: Claimant's notice of claim was mailed to the employer's address of record on June 29, 2007. 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 July 9, 2007. The employer received the notice of claim on July 2, 2007. On July 9, Carol Wells, Human Resources Manager, completed the employer's protest and attempted to fax the protest to Iowa Workforce Development at 4:37 p.m. The fax transmission was not successful. The fax report generated by the employer's fax machine indicates that the fax was unsuccessful because the Workforce Development fax machine was busy at the time the employer attempted to fax the document. Ms. Wells left work at approximately 5:00 p.m. Ms. Wells learned the following morning that the attempt to fax the protest had been unsuccessful. Ms. Wells contacted her local Workforce Development Center and was instructed to submit the protest with an explanation. The employer's protest was received at Iowa Workforce Development on July 10, 2007 at 9:07 a.m.

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 evidence indicates that the employer's protest was filed on July 10, 2007, when it was received by Iowa Workforce Development. The evidence in the record establishes that the employer failed to file a timely protest. The evidence indicates that the employer had the notice of claim for a week before the employer attempted to fax the document to the Iowa Workforce Development Unemployment Service Center on the day the protest was due. The evidence indicates that Ms. Wells waited until the end of her workday on the due date to attempt to submit the appeal by fax. Though the employer had until the stroke of midnight on the due date to submit the fax to Iowa Workforce Development, the evidence indicates that Ms. Wells assumed a successful transmission and left work at 5:00 p.m. The evidence indicates that the employer attempted to fax the document at a time when a reasonable person would have anticipated the possibility of encountering a busy fax machine at the Workforce Development Unemployment Insurance Service Center, that is, at the end of the Agency's normal business day and at the end of many businesses' normal business day. The evidence establishes that the employer's failure to file a timely protest was not attributable to Agency error or misinformation or delay or other action of the United States Postal Service. Accordingly, 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 July 11, 2007, reference 03, 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

