

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LARAINES LYONS

Claimant

APPEAL NO. 17A-UI-00356-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WENOSKA INC

Employer

OC: 12/11/16

Claimant: Respondent (4)

Iowa Code section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 9, 2017, reference 09, decision that allowed benefits to the claimant provided she 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 February 1, 2017. Claimant Laraine Lyons participated. Nancy Sparks represented the employer and presented additional testimony through Sam Vertz. Exhibit 1 and Department Exhibit D-1 were received into evidence. The administrative law judge took official notice of the agency's administrative record or wages reported for the claimant, which record establishes that the claimant was paid wages for insured work exceeding ten times her weekly benefit amount after her separation from this employer and prior to establishing the claim for unemployment insurance benefits.

ISSUE:

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 15, 2016, 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 27, 2017. The employer's address of record is the Wendy's restaurant in Oskaloosa. The notice of claim did not arrive at the employer's address of record until December 29, 2017. General Manager Sam Vertz opened the correspondence and immediately scanned and forwarded the notice of claim by email to General Manager and owner Nancy Sparks. Ms. Sparks completed the employer's protest information on the notice of claim form. Ms. Sparks erroneously entered December 27, 2016 as the day she completed the information on the form. Ms. Sparks forwarded the completed form to the employer's accountant. The accounting firm faxed the completed notice of claim/protest to Iowa Workforce Development on December 29, 2016. The Unemployment Insurance Service Center received the document the same day.

After the claimant separated from the employer in September 2015, and before the claimant established the claim for unemployment insurance benefits that was effective December 11, 2016, the claimant worked in insured work and was paid wages for insured work exceeding ten times her weekly benefit amount.

REASONING AND CONCLUSIONS OF LAW:

Iowa Admin. Code r. 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 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:

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.

Iowa Code § 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 good cause to deem the employer's late protest timely. The employer did not have a reasonable opportunity to file a protest by the December 27, 2016 protest deadline because the employer did not receive the notice of claim until December 29, 2016. The employer promptly filed a protest on the day the employer received the notice of claim. The evidence establishes that the late filing of the claim was attributable to Workforce Development error and/or delay or other action of the United States Postal Service.

Because the protest was timely and because the claimant has requalified for benefits under Iowa Code section 96.5(1)(g), the claimant is eligible for benefits, provided she meets all other eligibility requirements and the employer's account shall be relieved of liability for benefits paid to the claimant.

DECISION:

The January 9, 2017, reference 09, decision is modified as follows. The employer protest was timely. The claimant has requalified for benefits. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs