

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**INDIRA L PATEL**  
Claimant

**APPEAL NO. 10A-UI-02900-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**M & J LLC**  
**BUBBLES PROFESSIONAL DRYCLEANING**  
Employer

**Original Claim: 12/18/09**  
**Claimant: Respondent (1)**

Iowa Code section 96.6-2 - Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer filed an appeal from the February 23, 2010, reference 01, 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 April 7, 2009. Claimant participated. Jeri Postma, owner, represented the employer. Interpreter Renuka Bhatnagar assisted with the hearing. Exhibit One was received into evidence. The administrative law judge took official notice of the employer's address of record that appears in the Agency's administrative file record of correspondence between the Agency and 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 December 16, 2009, Iowa Workforce Development mailed a notice of claim concerning the above claimant to the employer's address of record on file with the Agency. That address of record was:

M & J LLC  
BUBBLES PROFESSIONAL DRYCLEANING  
307 – 11TH ST  
PO BOX 68  
SHELDON IA 51201

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 28, 2009. The employer's address of record with Workforce Development, up to the filing of the appeal in this matter on February 23, 2010, has been the above address. This was a Post Office box assigned to the employer's former accountant. When the employer ceased using the accountant, the employer did not contact Workforce Development to formally update its address of record on file with the Agency. Neither did the employer notify the Postal Service of the need to forward the employer's mail to the employer's

actual business address. Workforce Development has consistently directed correspondence to the employer at the above address. Though the employer did not formally update its address of record with the Agency, the employer has for the last several years submitted correspondence to Workforce Development that contained the following return address:

M & J LLC  
BUBBLES PROFESSIONAL DRYCLEANING  
511 – 3RD AVE  
SHELDON IA 51201

On February 9, 2010, Workforce Development mailed a quarterly statement of charges to the same address of record the Agency had previously used. A postal carrier intercepted the mail and routed it to the employer's actual business address on February 16, 2010. The quarterly statement of charges contained a charge for benefits paid to the claimant. On February 16, 2010, the employer submitted a protest of the charges to the Workforce Development Tax Bureau Chargebacks Unit. The Agency provided the employer with a copy of the notice of claim that had been mailed to the employer's address of record on December 16, 2009 and instructed the employer that it needed to update its address of record by contacting a field auditor.

#### **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 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 weight of the evidence indicates that Workforce Development took appropriate steps to notify the employer of the claim for benefits by mailing a notice of claim to the employer's address of record on December 16, 2009. The weight of the evidence indicates that the only reason the employer did not receive the notice of claim was because the employer had neglected, for years, to comply with the legal requirement that it update its address of record with Workforce Development. The evidence in the record establishes that the employer's protest was untimely. 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. 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 Agency representative's February 23, 2010, reference 01, 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.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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