

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ELIZABETH L SALLY**

Claimant

**APPEAL NO. 07A-UI-00567-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PAROCHETTI ENTERPRISES INC**

**TACO BELL**

Employer

**OC: 12/24/06 R: 04  
Claimant: Respondent (1)**

Section 96.6-2 - Timeliness of Protest

**STATEMENT OF THE CASE:**

Parochetti Enterprises Inc., doing business as Taco Bell, filed an appeal from the January 11, 2007, reference 03, decision that allowed benefits and found the protest untimely. After due notice was issued, a hearing was scheduled to held by telephone conference call on January 30, 2007. The claimant did not provide a telephone number for the hearing and did not participate. Jay Gerken, Director of Operations, provided a telephone number for the hearing, but was not available at that number at the time of the hearing. Mr. Gerken contacted the administrative law judge approximately 27 minutes after the scheduled start of the hearing and indicated his cell phone had been "out of range." The administrative law judge conducted an evidentiary hearing and received evidence from the employer at that time. The administrative law judge received employer's Exhibit One into evidence. The administrative law judge took official notice of the Agency's administrative file and received Department Exhibits D-1 into evidence.

**ISSUE:**

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 December 28, 2006. 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 January 8, 2007. The notice of claim was received at the employer's place of business in a timely fashion, prior to the deadline for protest. At 3:55 p.m. on January 8, Jay Gerken, Director of Operations, attempted to fax the protest to Iowa Workforce Development. Mr. Gerken then left work for a doctor's appointment. Prior to leaving, Mr. Gerken directed his staff to monitor the fax machine and to refax the protest if the original transmission was unsuccessful. At 4:00 p.m., the employer received a printout from its fax machine indicating that the fax had not been successfully transmitted. The employer's staff

did not monitor the fax machine and did not notice the fax report indicating the unsuccessful fax. The employer's staff left at 5:00 p.m. without taking additional action on the fax. The next morning, Mr. Gerken noticed the fax report, discovered that the fax had been unsuccessful, and discovered that the staff had made no further attempt to fax the protest. Mr. Gerken successfully faxed the protest on January 9 at 8:00 a.m. and the employer's faxed protest was received by Iowa Workforce Development at that time.

**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 in the record establishes that the employer failed to file a timely protest. The evidence further 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 January 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.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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