

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHEREE T ELKIN

Claimant

APPEAL NO. 17A-UI-00529-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FORT DODGE FORD LINCOLN INC

Employer

OC: 12/11/16

Claimant: Respondent (1)

Iowa Code Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed an appeal from the January 11, 2017, reference 03, 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 February 6, 2017. Claimant Cheree Elkin participated. Jesse Beekman represented the employer and presented testimony through Nancy Wyatt-Lombard. Exhibit 1 and Department Exhibit D-1 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: The employer has elected to receive electronic notice of unemployment insurance claims. The employer has elected to have such notice directed to the email address of Nancy Wyatt-Lombard, Controller. On December 16, 2016, Iowa Workforce Development sent the employer email notice of the claim concerning claimant Cheree Elkin and directed that notice to Ms. Wyatt-Lombard's email address. The email notice alerted the employer of the need to respond to a notice of claim that had been added to the employer's SIDES account. The weight the evidence establishes that the employer received the email notice in a timely manner on December 16, 2016 at the email address designated by the employer. The employer does not know what happened with the emailed notice. Ms. Wyatt-Lombard concedes that she may have accidentally deleted the emailed notice to check the SIDES account for the claim. The electronic notice of claim information added to the employer's SIDES account on December 16, 2016 provided a December 29, 2016 deadline for the employer's protest. That deadline took into consideration that the emailed notice was sent on a Friday evening and the employer might not review the email notice until the following Monday. In other words, the employer would have 10 days from Monday, December 19, 2016 to file its protest. Ms. Wyatt-Lombard subsequently received an email notice that another claimant's claim for benefits had been added to the employer's SIDES

account. On January 7, 2017, Ms. Wyatt-Lombard accessed the employer's SIDES account and noted the most recent claim and the earlier claim concerning Ms. Elkin. On January 7, 2017, Ms. Wyatt-Lombard electronically filed the employer's protest of Ms. Elkin's claim. The protest was received by the electronic broker on that day and was processed by Iowa Workforce Development on January 8, 2017.

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 that the employer's January 7, 2017 protest was untimely. The evidence establishes that the employer received appropriate and timely notice of the claim and that the employer had a reasonable opportunity to file a timely protest by the December 29, 2016 deadline. The evidence establishes that 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 remain in effect.

DECISION:

The January 11, 2017, reference 03, decision is affirmed. The employer's protest was untimely. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs