

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ATEANNA L HAYES
Claimant

APPEAL NO. 15A-UI-13020-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DALL-HAUS INC
Employer

OC: 10/25/15
Claimant: Respondent (1)

Iowa Code Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 19, 2015, reference 02, 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 December 14, 2015. Claimant Ateanna Hayes did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Kendra Gehman represented the employer. Exhibit One and Department Exhibits D-1 were received into evidence. The administrative law judge took official notice of the Agency's administrative record of wages paid to the claimant subsequent to her separation from this employer and prior to her claim for unemployment insurance benefits.

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: Claimant Ateanna Hayes established a claim for unemployment insurance benefits that was effective October 25, 2015. Dall-Haus, Inc. is a base-period employer for purposes of that claim. The employer has elected to receive electronic notice of claims. On October 30, 2015, Workforce Development sent the employer notice, via email, of Ms. Hayes's claim. The electronic notice of claim indicated that the employer's protest was due on November 12, 2015. The notice of claim was received at the employer's email address of record in a timely manner, prior to the deadline for protest. On November 2, 2015, owner Katie Sturtz forwarded the electronic notice of claim via email to Kendra Gehman, General Manager at the employer's Edgewood Road restaurant. When Ms. Sturtz forwarded the email to Ms. Sturtz, the computer at the employer Edgewood Road restaurant routed Ms. Sturtz's message to a trash file. On or about November 16, 2015, Ms. Sturtz followed up with Ms. Gehman to learn why a protest had not been filed in response to the notice claim. Ms. Gehman then searched her email and found

the forwarded notice of claim correspondence in a trash file. On November 16, 2015, Ms. Gehman completed a protest and electronically transmitted the protest to Workforce Development that same day. Workforce Development most likely received the protest that same day.

The claimant separated from the employer in September 2014. Subsequent to separating from the employer, and prior to establishing her claim for benefits, the claimant worked in and was paid wages for insured work exceeding ten times her \$65 weekly benefit amount.

REASONING AND CONCLUSIONS OF LAW:

Iowa Admin. Code r. 871-24.35(1) and (2) 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.

(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.

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 employer's protest, submitted electronically, was filed on November 16, 2015; when the employer transmitted it and when Workforce Development most likely received the electronic protest.

The evidence in the record establishes that the employer's protest was untimely. The evidence establishes that the employer had a reasonable opportunity to file a timely protest. The employer received the notice of claim on or about October 30, 2015. At that point, the employer had 13 days in which to file a timely protest. The administrative law judge notes that the employer given three more days to file a protest beyond than the ten-day cutoff imposed by the statute. The employer's protest was filed on or about November 16, 2015. The evidence establishes that the employer's failure to file a timely protest was not attributable to Workforce Development error, Workforce Development misinformation, delay on the part of the United States Postal Services or other action of the United States Postal Service. Rather, the delay in filing the protest was entirely attributable to the employer's internal operations. Accordingly, there is not good cause to treat the late protest as a timely protest. Because the protest was untimely, 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 November 19, 2015, reference 02, 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

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