

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DANNY M BARRETT**  
Claimant

**APPEAL NO. 15A-UI-06615-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BUILDING PRODUCTS INC OF IOWA**  
Employer

**OC: 05/17/15**  
**Claimant: Respondent (1)**

Iowa Code Section 96.6-2 - Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer filed an appeal from the June 4, 2015, reference 04, decision that allowed benefits to the claimant and that held the employer's account could be charged for benefits, based on an Agency conclusion that the employer's protest was untimely. After due notice was issued, a hearing was held by telephone conference call on July 16, 2015. Claimant Danny Barrett participated. Hollie Engle represented the employer. Exhibit One and Department Exhibit D-1 were received into evidence.

**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 May 20, 2015, 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 June 1, 2015. The notice of claim was received at the employer's address of in a timely manner, prior to the deadline for protest. The employer's address of record is in South Dakota. The employer's corporate office in South Dakota forwarded the notice of claim by email to Hollie Engle, Human Resources Manager, who was located in Evansdale. On May 26, 2015, Ms. Engle prepared the employer's protest and attempted to fax the protest to Workforce Development. The employer sometimes has problems with its fax machine. Ms. Engle did not wait to see whether she had successfully transmitted the protest. She had not. The employer's fax machine made two unsuccessful attempts to fax the protest. In connection with both attempts, the employer's fax machine printed a fax report indicating there had been an error in the fax transmission. Ms. Engle believes that others who used the fax machine most likely threw the error reports away. On May 28 or 29, 2015, Ms. Engle review the fax log and learned that her attempts to fax the protest were not successful. Ms. Engle gained assistance from a colleague to print out new copies of the error reports. At 4:59 p.m. on June 2, 2015, Ms. Engle

successfully faxed the employer's protest to Workforce Development. The Unemployment Insurance Service Center received the protest by fax after normal business hours on June 2, 2015 and marked the protest as being received on June 3, 2015.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Admin. Code r. 871-24.35(1) provides:

(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:

(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 evidence establishes that the employer's protest was untimely.

The employer's protest was filed on June 2, 2015, when Workforce Development received the employer's faxed protest. The evidence establishes that the employer had a reasonable opportunity to file a timely protest. The employer received the notice of claim in a timely manner. The employer failed to successfully transmit the protest in a timely manner. On May 26, 2015, the employer failed to take reasonable steps to ensure that the protest has been successfully transmitted to Workforce Development. The employer's fax machine provided the employer with a timely, printed report, indicating the protest had not been successfully transmitted. Ms. Engle knew as of May 28 or 29, 2015 that her attempts to fax the protest on May 26, 2015 were not successful. Ms. Engle waited until June 2, 2015, after the protest period had expired, to fax the protest. 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 employer failed to preserve its right to protest liability on the claim or the claimant's eligibility for benefits in connection with the separation from the employment. 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 June 4, 2015, reference 04, decision is affirmed. The employer's protest was untimely. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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