

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAUL W MATTHEIS
Claimant

APPEAL NO. 13A-UI-01458-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TABOR HOME WINES
Employer

OC: 05/06/12
Claimant: Respondent (1)

Iowa Code Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 31, 2013, reference 02, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's protest was untimely. After due notice was issued, a hearing was held by telephone conference call on March 6, 2013. Dr. Paul Tabor represented the employer. Claimant Paul Mattheis participated. The hearing in this matter was consolidated with the hearing in Appeal Number 13A-UI-01459-JTT. Exhibits One through Seventeen and Department Exhibit D-1 were received into evidence.

ISSUE:

Whether there is good cause to treat the employer's late protest as a timely protest.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: On January 15, 2013, Iowa Workforce Development mailed a notice of claim concerning claimant Paul Mattheis to the employer's address of record. The notice of claim contained a warning that any protest must be faxed or postmarked by January 25, 2013. The notice of claim was received at the employer's address of in a timely manner, prior to the deadline for protest. After the employer received the notice of claim, the employer consulted with its accountant for guidance. The employer received feedback from the accountant by email on January 22, 2013. Rather than immediately submitting a protest, the employer went about collecting documents to support the employer's position that the claimant should not be eligible for unemployment insurance benefits. On Friday, January 25, 2013, between 3:09 p.m. and 3:19 p.m., the employer made four attempts to fax the several pages of protest materials to Workforce Development at the fax number indicated on the back of the notice of claim: 515-281-6208. The fax number was busy during those ten minutes or so and none of the employer's protest materials were transmitted to Workforce Development at that time. The employer left the workplace on the afternoon of January 25, 2013 without first confirming that the protest materials had been successfully faxed to Workforce Development. The employer's fax machine generates a journal to indicate whether materials have been successfully transmitted.

On January 29, 2013, the employer reviewed the fax transmission journal and saw that the protest materials had not been successfully transmitted to Workforce Development on January 25, 2013. On that day, the employer faxed protest materials to Workforce Development and the Unemployment Insurance Service Center received the employer's protest by fax.

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 employer's protest was filed on January 29, 2013, when the Unemployment Insurance Service Center received the employer's faxed protest.

The employer had a reasonable opportunity to file a timely protest. The employer received the notice of claim in a timely manner. The employer unnecessarily delayed its attempt to file a protest to the day the protest was due. The employer's attempt to transmit the protest by fax was then limited to approximately ten minutes, during which the employer encountered a busy signal. The employer's attempt to file the protest by the deadline ended at 3:19 p.m. on January 25, 2013. The employer had until the stroke of midnight at the end of January 25, 2013 to file a timely protest, but prematurely abandoned the task.

The evidence in the record establishes that the employer's protest was untimely. 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. The employer's encounter with a busy fax line during the ten-minute period in the middle of the afternoon on January 25, 2013 did not cause the employer's protest to be late. The employer still had more than eight and a half hours after that incident to file a protest by fax. The employer also had multiple days prior to January 25, 2013 to file a protest by fax or mail.

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 in connection with that separation, or the employer's liability for benefits in connection with the separation. The agency's initial determination of the claimant's eligibility for benefits and the employer's liability for benefits shall remain in effect.

The administrative does acknowledge the scrivener's error in the lower decision, which referenced the notice of claim being mailed to the employer on May 6, 2012. That date was actually the original claim date. As the notice of claim indicates on its face and as the other evidence submitted at the appeal hearing confirms, the notice of claim was mailed to the employer on January 15, 2013.

DECISION:

The Agency representative's January 31, 2013, reference 02, decision is affirmed. The employer's protest was untimely. The agency's initial determination of the claimant's eligibility for benefits and the employer's liability for benefits shall remain in effect. The clerical error in the lower decision is corrected to indicate that the notice of claim was mailed to the employer on January 15, 2013.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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