

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MONICA B KEMP
Claimant

APPEAL NO. 15A-UI-08311-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JULIE LAUE
Employer

OC: 04/05/15
Claimant: Respondent (2/R)

Iowa Code Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed an appeal from the July 21, 2015, reference 03, 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 August 17, 2015. Claimant Monica Kemp did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Julie Laue represented the employer and presented additional testimony through Scott Noll. Exhibits One and Two 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 July 6, 2015, Iowa Workforce Development mailed a notice of claim concerning the above claimant to the employer's address of record. That address of record is 2729 Regina Drive, Burlington, IA 52601. 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 July 16, 2015. The United States Postal Service misdirected the notice of claim to the employer's neighbor. The neighbor delivered the notice of claim to the employer on July 17, 2015. That same morning, the employer completed information on the notice of claim form and drafted a separate protest letter. That same morning, the employer delivered the completed protest to the Burlington Workforce Development Center, which faxed the materials to the Unemployment Insurance Service Center in Des Moines.

REASONING AND CONCLUSIONS OF LAW:

Iowa Admin. Code r. 871-24.35(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.

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.

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 was filed on July 17, 2015, when Workforce Development received the faxed appeal. The protest was filed one day beyond the deadline set forth on the notice of claim pursuant to Iowa Code section 96.6(2). The question becomes whether the employer had good cause for the late filing the protest beyond the protest deadline. The employer did not have a reasonable opportunity to file a protest by the July 16, 2015 because the United States Postal Service delivered the notice of claim to the wrong address and the employer did not receive the notice of claim until July 17, 2015. The employer then filed a protest the same day. There is good cause to treat the late protest as a timely protest and remand the matter for a fact-finding interview.

DECISION:

The July 21, 2015, reference 03, decision is reversed. The employer's protest was timely.

This matter is remanded to the Benefits Bureau for a fact-finding interview after appropriate notice to the parties.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/mak