

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERIKA FIGUEROA HIGAREDA
Claimant

APPEAL NO. 15A-UI-10304-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

OC: 04/05/15
Claimant: Respondent (1)

Iowa Code Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 11, 2015, reference 01, 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 September 25, 2015. The claimant did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Steve Volle, Risk Manager, represented the employer. Exhibits One was 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: On April 14, 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 April 24, 2015. The notice of claim was received at the employer's address of record on April 16, 2015. On that date, the employer attempted to fax the protest to Iowa Workforce Development. The fax transmission report generated in connection with that effort indicates that the employer encountered a busy signal and that the protest was not successfully transmitted to Iowa Workforce Development. The fax transmission reported is dated April 16, 2015 and also indicates the time of day the report was generated: 12:04. The employer did not note that the fax transmission report indicated that no transmission of the protest had taken place. The employer did not take any additional steps regarding the matter until August 17, 2015, after the employer received that quarterly statement of charges that had been mailed to the employer earlier that month. On August 17, 2015 the employer made written contact with the Benefits Bureau at Iowa Workforce Development to protest the claim. Workforce Development documented a protest on that date.

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.

The employer's protest was filed on August 17, 2015, when the employer's protest was received by Workforce Development. The Agency had not received an earlier protest.

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 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 in a timely manner. The employer's fax transmission reported prompted provided the employer with information indicating that no protest had been transmitted. At that point, the employer still had eight days in which to file a timely protest. Instead, the protest was not filed until months later. 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 mere fact that the employer might encounter a busy signal when attempting to fax the protest does not provide good cause to treat the employer's protest as a timely protest. A reasonable person would anticipate the possibility that the Unemployment Insurance Service Center's fax machine might be busy from time to time and would make appropriate arrangements to successfully transmit a protest subsequent to that particular attempt, but prior to the protest deadline. 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 September 11, 2015, reference 01, 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/pjs