

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRYSTAL L BROWN
Claimant

APPEAL NO. 16A-UI-09070-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ON A 3 LLC
Employer

OC: 07/17/16
Claimant: Respondent (4)

Iowa Code Section 96.6-2 – Timeliness of Protest
Iowa Code Section 96.5(1)(g) – Requalification for benefits

STATEMENT OF THE CASE:

The employer filed an appeal from the August 10, 2016, 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 September 7, 2016. The claimant did not follow the hearing notice instructions to register a telephone number for the hearing and did not participate. Kelly Davis represented the employer and presented additional testimony through Brian Bair. Exhibit D-1 was received into evidence. The administrative law judge took official notice of the agency's administrative record of wages paid to the claimant, which record indicates that the claimant earned at least 10 times her weekly benefit amount from new insured employment subsequently to separating from this employer and prior to establishing her claim for 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.

Whether the employer's account may be charged for benefits paid to the claimant.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: On July 22, 2016, 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 August 1, 2016. The notice of claim was received at the employer's address of record in a timely manner, prior to the deadline for protest. On July 29, 2016, the employer deposited an envelopment containing the protest in a United States Postal Service community mail drop box. The employer had properly addressed the correspondence and had affixed proper postage. Though the employer had deposited the mail in the appropriate mail receptacle on July 29,

2016, the United States Postal Service did not postmark the correspondence until August 2, 2016, four days after the employer mailed the correspondence. Iowa Workforce Development received the employer's mailed protest on August 4, 2016.

Subsequent to her separation from this employer, and prior to her application for unemployment insurance benefits, the claimant earned at least 10 times her weekly benefit amount from new insured employment.

REASONING AND CONCLUSIONS OF LAW:

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

Date of submission and extension of time for payments and notices.

(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:

Date of submission and extension of time for payments and notices.

(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 division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

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 division 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 division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

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 evidence establishes good cause, attributable to the United States Postal Service, to treat the employer's late protest as a timely protest. The employer had taken reasonable steps to assure that the protest was mailed, postmarked and transmitted to Workforce Development in a timely manner. The United States Postal Service delayed processing and postmarking the correspondence until after the protest deadline had passed. The employer's account is relieved of liability for benefits paid to the claimant. The claimant has requalified for benefits pursuant to Iowa Code section 96.5(1)(g) and is eligible for benefits provided she meets all other eligibility requirements.

DECISION:

The August 10, 2016, reference 03, decision is modified as follows. The employer's protest was timely. The claimant has requalified for benefits since the separation. The employer's account is relieved of liability for benefits paid to the claimant. The claimant is eligible for benefits, provided she meets all other eligibility requirements.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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