

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DONTREALE ANDERSON
Claimant

APPEAL NO. 19A-UI-08277-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES MOINES IND COMMUNITY SCH DIST
Employer

OC: 09/29/19
Claimant: Respondent (2/R)

Iowa Code Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 22, 2019 (reference 02) decision that allowed benefits to the claimant provided he 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 November 12, 2019. Claimant Dontreale Anderson did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. Rhonda Wagoner represented the employer. Exhibits 1 through 5 and Department Exhibits D-1, D-2 and D-3 were 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 October 4, 2019, Iowa Workforce Development mailed a notice of claim concerning claimant Dontreale Anderson to the employer's address of record. Until October 16, 2019, that address of record on file with Iowa Workforce Development was as follows:

DES MOINES IND COMMUNITY SCH DIST
ATTN: CATHY MCKAY
2323 GRAND AVE
DES MOINES IA 50312

As of October 4, 2019, the District's human resources personnel were still working from the Grand Avenue location, but were preparing to relocate to a different district facility located at 2100 Fleur Drive, Des Moines, Iowa 50321. The District's Business and Finance personnel had relocated from the Grand Avenue address to the Fleur Drive address on September 30, 2019. In connection with the Business and Finance September 30 relocation, the Business and Finance staff notified the United States Postal Service of the change of address and requested

to have District mail that was addressed to the Grand Avenue location forwarded to the Fleur Drive address instead. The Business and Finance personnel's forwarding request resulted in *all* mail being forwarded to the Fleur Drive location and prevented the human resources personnel from receiving *any* mail at the Grand Avenue address. The United States Postal Service routed all of the mail directed to the Grand Avenue address to a Minneapolis processing center and then routed the mail to the Fleur Drive address.

Effective October 9, 2019, the District's human resources personnel commenced operating from the Fleur Drive location. As of that date, the District had not yet received the October 4, 2019 notice of claim concerning Dontreale Anderson. On October 15 or 16, 2019, the District received the notice of claim at the Fleur Drive address. On October 16, 2019, Judi Martens, Business and Finance Manager, delivered the notice of claim to the human resources department. On that same day, Rhonda Wagoner, Benefits Specialist, wrote the District's protest information on the notice of claim form and faxed the form to Iowa Workforce Development. The Iowa Workforce Development Unemployment Insurance Service Center received the protest on October 16, 2019 and marked it late. Within an hour after filing the protest, Ms. Wagoner had Ms. Martens change the District's address of record with Iowa Workforce Development to the Fleur Drive address.

REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Administrative Code Rule 871-24.8(2)(a) and (b) provide as follows:

- (2) Responding by employing units to a notice of the filing of an initial claim or a request for wage and separation information and protesting the payment of benefits.

- a. The employing unit which receives a Form 65-5317, Notice of Claim, or a Form 68-0221, Request for Wage and Separation Information, must, within ten days of the date of the notice or request, submit to the department wage or separation information that affects the individual's rights to benefits, including any facts which disclose that the individual separated from employment voluntarily and without good cause attributable to the employer or was discharged for misconduct in connection with employment.

- b. The employing unit may protest the payment of benefits if the protest is postmarked within ten days of the date of the notice of the filing of an initial claim. In the event that

the tenth day falls on a Saturday, Sunday or holiday, the protest period is extended to the next working day of the department. If the employing unit has filed a timely report of facts that might adversely affect the individual's benefit rights, the report shall be considered as a protest to the payment of benefits.

Iowa Administrative Code Rule 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 via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

c. If transmitted by any means other than those outlined in paragraphs 24.35(1)"a" and "b", on the date it is received by the division.

Iowa Administrative Code Rule 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.

Contrary to the employer's assertion in the October 23, 2019 appeal letter that the notice of claim "was mailed to the incorrect address," the October 4, 2019 notice of claim was in fact mailed to the employer's correct address of record.

The evidence establishes good cause to treat the late protest as a timely protest. The employer's protest was filed on October 16, 2019, one day after the protest deadline. The District did not receive the notice of claim until October 15 or 16, 2019, which means the District received the notice of claim on October 15, 2019 would not provide the employer a reasonable opportunity to file a protest by the October 15, 2019 protest deadline. Receipt of the notice of claim on the day after the protest was due would also deny the employer a reasonable opportunity to file a protest by the protest deadline. Though the employer contributed to the delayed receipt of the notice of claim through the mail forwarding request, the United States Postal Service also contributed to the employer's delayed receipt of the notice of claim through the prolonged forwarding process. For that reason, the administrative law judge concludes there is good cause to treat the employer's late protest as a timely protest. This matter will be remanded to the Benefits Bureau for a fact-finding interview to determine the claimant's eligibility for benefits and the employer's liability for benefits based on the claimant's separation from the employer.

DECISION:

The October 22, 2019 (reference 02) decision is reversed. The employer's protest was timely. This matter is remanded to the Benefits Bureau for a fact-finding interview to determine the claimant's eligibility for benefits and the employer's liability for benefits based on the claimant's separation from the employer.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn