

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CARRIE L YOUNG
Claimant

APPEAL NO. 14A-UI-03843-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOUBLE D SQUARED
Employer

OC: 03/02/14
Claimant: Respondent (1)

Iowa Code Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed an appeal from the April 2, 2014, reference 09, 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 found the employer's protest untimely. After due notice was issued, a hearing was held by telephone conference call on April 30, 2014. The claimant did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Amanda Kelderman represented the employer. Exhibit A and Department Exhibit D-1 were received into evidence. The administrative law judge took official notice of the agency's administrative record of quarterly wages reported for the claimant, which record indicates that the claimant has earned more than ten times her weekly benefit amount since separating from Double D Squared.

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 March 11, 2014, Iowa Workforce Development mailed a notice of claim concerning the above claimant to the employer's last-known 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 March 21, 2014. The notice of claim was received at the employer's address of in a timely manner, prior to the deadline for protest. On March 18, 2014, Amanda Kelderman, Human Resources Director, received the notice of claim into her possession. On March 21, 2014, Ms. Kelderman completed the employer's protest information on the notice of claim form and signed the document to certify the accuracy of the information. The employer mailed the protest. Sometime on the afternoon of March 21, 2014, Ms. Kelderman took the envelope containing the protest to the Johnston Post Office and deposited it in a mailbox. The document was placed in the mailbox too late to be postmarked on March 21, 2014. The Post Office

postmarked the correspondence on March 22, 2014 at 1:00 p.m. The Unemployment Insurance Service Center received the protest on March 27, 2014.

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 Iowa Court of Appeals has held that when an appeal from an unemployment decision was placed in the mail stream on the appeal due date, but postmarked the next day, the filing date was the date of the postmark and the appeal was untimely. Pepsi-Cola Bottling Company of Cedar Rapids v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

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 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 waited until the day the protest was due to complete the employer's protest information on the notice of claim form. The employer then waited until the afternoon of the day the protest was due to place it in the mail stream and did so too late for the protest to be postmarked March 21, 2014. Under the administrative code rule and the Court of Appeals ruling cited above, the protest was deemed filed on March 22, 2014, the postmark date. Based on the untimeliness of the protest, 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 stand and remain in full force and effect.

DECISION:

The Claims Deputy's April 2, 2014, reference 09, 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 stand and remain in full force and effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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