

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROXANNE L FORD
Claimant

APPEAL NO. 16A-UI-08129-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DHANLAXMI INC
Employer

OC: 06/19/16
Claimant: Respondent (1)

Iowa Code Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed an appeal from the July 18, 2016, reference 04, decision that allowed benefits to the claimant provided she was otherwise eligible and that held that employer's account could be charged for benefits, based on an agency conclusion that the employer's protest was untimely. A hearing was scheduled for 9:00 a.m. on August 11, 2016 and the parties were properly notified. Prior to 9:30 a.m., neither party had complied with the hearing notice instructions to register a telephone number for the hearing. At 9:30 a.m., Rica Patel, Front Desk Manager, contacted the Appeals Bureau regarding the hearing the employer had missed at 9:00 a.m. The administrative law judge had not formally closed the hearing record and deemed it appropriate to proceed with the hearing. Claimant Roxanne Ford never responded to the hearing notice instructions to provide a telephone number for the hearing and did not participate in the appeal hearing. Exhibit One and Department Exhibits D-1 and D-2 were received into evidence.

ISSUE:

Whether there is good cause to deem the employer's late protest a timely protest.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: On June 23, 2016, Iowa Workforce Development mailed a notice of claim concerning the above claimant to the employer's correct address of record. The address of record is the business location of a Super 8 Motel operated by the employer. 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 5, 2016. The employer witness does not know when the United States Postal Service delivered the notice of claim to the employer's address of record. The employer did not keep the envelope that contained the notice of claim. The envelope did not bear any marking indicating that correspondence had been misdirected or delayed in reaching the employer. The weight of the evidence indicates that the notice of claim was delivered to the employer's address of record in a timely manner, prior to the July 5, 2016 protest deadline. On July 13, 2016, Rica Patel, Front Desk Manager, collected the notice of claim from a mail basket inside the workplace. Ms. Patel wrote incomplete protest information on the notice of claim form and

signed the form. Ms. Patel did not date her signature on the form in the space provided for a date. Ms. Patel did not provide the separation date in the space provided for that information. Ms. Patel did not write anything in the remarks section provided on the notice of claim form. On July 13, 2016, Ms. Patel faxed the protest form to the Workforce Development Unemployment Insurance Service Center. Workforce Development received the protest on July 13, 2016 and marked it as late.

Claimant Roxanne Ford separated from the employer on or about September 30, 2015. After the separation, and prior to the unemployment insurance claim that was effective June 19, 2016, Ms. Ford was employed in new insured work and was paid wages in excess of 10 times her \$155.00 weekly unemployment insurance benefit amount.

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 employer has presented insufficient evidence to establish good cause to treat the late protest as a timely protest. The employer provided contradictory and speculative testimony concerning when the employer received the notice of claim that had been mailed to the employer on June 23, 2016. Ms. Patel initially testified that she did not know when the employer received the notice of claim form. Ms. Patel then speculated that the employer must have received the notice of claim on July 11 or 12, 2016. However, the employer did not keep the envelope in which the notice of claim had been mailed to the employer. In addition, Ms. Patel testified that she did not recall any notation on the envelope to indicate that the correspondence had been misdirected or delayed prior to reaching the employer. Though Ms. Patel asserted she was diligent in reviewing and responding to correspondence, the incomplete, undated protest form indicates otherwise. The late appearance for the appeal hearing and the failure to take timely steps to register a telephone number for the appeal hearing in response to the hearing notice instructions also indicates otherwise. A reasonable person would expect the employer to make some reference to late receipt of the notice of claim in the protest materials if the employer had indeed received the notice of claim late. Such reference is conspicuously absent from the protest materials. Nor is there any reference to late receipt of the notice of claim in the employer's appeal materials. The weight of the evidence indicates that the employer received the notice of claimant in a timely manner and simply waited to July 13, 2016 to take action on the matter.

Because the employer's protest was untimely, the employer has failed to preserve its right to challenge the agency determination that the employer is liable for benefits. Because the protest was untimely, the administrative law judge lacks jurisdiction to disturb the agency's initial determination that the claimant is eligible for benefits provided she is otherwise eligible and that the employer's account may be charged for benefits paid to the claimant. The administrative law judge notes that the notice of claim set forth the employer maximum liability in connection with the claim at \$132.99.

DECISION:

The July 18, 2016, reference 04, decision is affirmed. The employer's protest was untimely. The claimant is eligible for benefits, provided she meets all other eligibility requirements. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs