

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DEBORAH ANDERSON**  
Claimant

**APPEAL NO. 17A-UI-11498-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DODD PRINTING & STATIONARY INC**  
Employer

**OC: 10/08/17**  
**Claimant: Respondent (1)**

Iowa Code section 96.6-2 - Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer filed an appeal from the October 31, 2017, 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 November 30, 2017. Claimant Deborah Anderson participated. Neal Dodd represented the employer. Exhibits 1 through 8 were received into evidence. The administrative law judge took official notice of the claimant's wages subsequent to her separation from this employer and prior to her unemployment insurance claim (WAGEA).

**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 16, 2017, Iowa Workforce Development mailed a notice of claim concerning claimant Deborah Anderson to last-known address of record for employer Dodd Printing & Stationary, Inc. (employer account number 029782). 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 October 26, 2017. The notice of claim was received at the employer's address of record in a timely manner, prior to the deadline for protest. On October 26, 2017, Neal Dodd, completed the employer's protest information on the notice of claim form. Mr. Dodd was President of Dodd Printing & Stationary, Inc. until he sold his company to Future Matt, Inc. (employer account number 594678). The sale was effective July 1, 2017. On October 24, 2017, Iowa Workforce Development determined Future Matt, Inc. to be a full successor to Dodd Printing & Stationary, Inc. for unemployment insurance tax and liability purposes. Subsequent to the sale of the business, Mr. Dodd became an employee of Future Matt, Inc. On October 27, 2017, Mr. Dodd faxed the notice of claim form back to Iowa Workforce Development. The Unemployment Insurance Service Center received the notice of claim/protest by fax on October 27, 2017.

Deborah Anderson last performed work for Dodd Printing & Stationary, Inc. on December 30, 2016. Subsequent to her separation from that employment and prior to establishing the claim for benefits that was effective October 8, 2017, Ms. Anderson worked in additional insured work for which she was paid wages equal to 10 times her \$149.00 unemployment insurance weekly 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 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 evidence in the record establishes that the employer's protest was untimely. The evidence establishes that the employer, Dodd Printing & Stationary, Inc. (employer account number 029782) had a reasonable opportunity to file a timely protest by the October 26, 2017 protest deadline, but filed the protest on October 27, 2017. The late filing of the protest was attributable to the employer and was not attributable to Workforce Development or the United States Postal Service. Accordingly, 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.

The successorship issue is a separate legal issue from the timeliness of protest issue and need not be addressed by the present decision.

**DECISION:**

The October 31, 2017, reference 01, decision is affirmed. The employer's protest was untimely. 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 assessed for benefits remains in effect.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs