

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSHUA R STARR
Claimant

APPEAL NO. 08A-UI-06563-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MAKOBEN, LEON
D & D FENCING
Employer

OC: 06/08/08 R: 04
Claimant: Respondent (1)

Iowa Code Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

Leon Makoben, doing business as D & D Fencing, filed an appeal from the July 8, 2008, reference 02, decision that allowed benefits and that found the employer's protest untimely. After due notice was issued, a hearing was held by telephone conference call on July 30, 2008. The claimant did not participate. The employer participated through Leon Makoben, Owner. Exhibit D-1 was received into evidence. The administrative law judge took official notice of the Agency's record of benefits earned by the claimant since he separated from this employer, which records indicate that claimant has requalified for benefits by earning ten times his weekly benefit amount.

ISSUES:

Whether the employer's protest of the claim for benefits was timely.

Whether good cause existed for a late filing of the protest.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: On June 16, 2008, Workforce Development mailed the employer a notice of claim concerning Joshua Starr. The notice of claim was mailed to the employer's address of record in Stockton, Iowa. The address of record corresponds to the employer's residence/business address. 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 June 26, 2008.

The employer had left for vacation on June 15, 2008. Before leaving for vacation, the employer had made arrangements for the local post office to hold its mail until the employer returned from vacation. The weight of the evidence indicates that notice of claim was received at the Stockton post office in a timely fashion, prior to the deadline for protest. The post office held the Workforce Development correspondence for the employer until the employer returned from vacation. The employer returned from vacation on June 30, 2008, after the deadline for protest had passed. The notice of claim was in the mail the employer collected from the post office.

The employer entered its protest information on the notice of claim form on June 30, 2008. The employer faxed the notice of claim/protest form to Workforce Development on July 3, 2008 and the Agency date-stamped the protest as being received on that day.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 24.35(1) and (2) provide:

(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.

(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 that court in that decision 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 not shown any good cause for not complying with the jurisdictional time limit. Therefore, the administrative law judge is without jurisdiction to entertain any appeal regarding the separation from employment.

The employer's protest was filed on July 3, 2008, the day it was received at Workforce Development. This was one week after the protest deadline. The evidence in the record establishes that the employer failed to file a timely protest. The evidence further establishes that the employer's failure to file a timely protest was not attributable to Agency error or misinformation or delay or other action of the United States Postal Service. Instead, the evidence indicates that the employer's late protest was prompted by the employer's vacation, which started before Workforce Development mailed the notice of claim and ended four days after the deadline for protest. Accordingly, the administrative law judge lacks jurisdiction to make a 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 Agency representative's July 8, 2008, reference 02, decision is affirmed. 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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