

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MCKAYLA M VANDERPOOL
Claimant

APPEAL NO. 16A-UI-10547-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PALMER COMPANIES INC
Employer

OC: 09/04/16
Claimant: Respondent (1)

Iowa Code Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 26, 2016, reference 02, 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 October 11, 2016. Claimant McKayla Vanderpool did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Kara Calease represented the employer. Exhibit One and Department Exhibit D-1 were received into evidence. The administrative law judge took official notice of the wages paid to the claimant between her separation from the employer of the filing of the unemployment insurance claim.

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: The employer has elected to receive electronic notice of claims. On September 8, 2016, Iowa Workforce Development transmitted an electronic notice of claim concerning the above claimant to the email address designated by the employer. The notice of claim provided a September 19, 2016 deadline for the employer's response. The employer received the notice of claim in a timely manner. Kara Calease, Account Executive, was the employer representative responsible for responding to the notice of claim. The task slipped Ms. Calease's mind until September 21, 2016, when she saw it on her calendar. On that day, Ms. Calease entered the employer's protest information and transmitted the protest to Iowa Workforce Development. The electronic broker received the protest on September 21, 2016 at 5:16 p.m. The Unemployment Insurance Service Center received the electronic protest the following day.

After the claimant separated from the employer in May 2015, and before the claimant established the claim for benefits that was effective September 4, 2016, the claimant worked in and was paid wages for insured work well in excess of 10 times her 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 § 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 had a reasonable opportunity to file a timely protest by the September 19, 2016 protest deadline, but delayed taking action on the matter until September 21, 2016. Because the late filing of the protest was attributable to the employer, and not attributable to the Workforce Development or the United States Postal Service, there is not good cause to treat the late protest as a timely protest. Accordingly, the administrative law judge lacks jurisdiction to disturb Workforce Development's initial determination of the claimant's eligibility for benefits, and the employer's liability for benefits, based on the May 2015 employment separation. The claimant remains eligible for benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

DECISION:

The September 26, 2016, reference 02, decision is affirmed. The employer's protest was untimely. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs