

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUSTIN F LEWIS
Claimant

APPEAL NO. 15A-UI-02496-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SHOKAI LLC
Employer

OC: 01/25/15
Claimant: Respondent (1)

Iowa Code Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 16, 2015, reference 01, decision that allowed benefits to the claimant, provided he was otherwise eligible; and 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 March 30, 2015. The claimant did not respond to the hearing notice instructions to provide a number for the hearing and did not participate. Kikhom Sisomphane, Manager, represented the employer. Exhibit One and Department Exhibit D-1 were received into evidence.

ISSUE:

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 January 29, 2015, Iowa Workforce Development mailed a notice of claim concerning the above claimant to the employer's 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 February 9, 2015. The notice of claim was received at the employer's address of in a timely manner, prior to the deadline for protest. The envelope in which the notice of claim was mailed to the employer was marked Notice of Claim – Open Immediately. The employer did not open the correspondence until February 10, 2015. The employer provided partial information on the notice of claim form, but did not provide complete information on the notice of claim. On February 12, 2015, the employer faxed the notice of claim/protest to Workforce Development. Workforce Development received the employer's protest that same day.

REASONING AND CONCLUSIONS OF LAW:

Iowa Admin. Code r. 871-24.35(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.

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.

The employer's protest was filed on February 12, 2015, when Workforce Development received the protest the employer had faxed that day.

Another portion of Iowa Code section 96.6 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 received the notice of claim in a timely manner and had a reasonable opportunity to file a timely protest. The employer actually had an extra day beyond the ten-day statutory deadline because the protest deadline would otherwise have been Sunday, February 8, 2015. 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 delay in filing the protest was attributable to the employer not opening and responding to the notice of claim in a timely manner. 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 he is otherwise eligible and that the employer's account may be charged for benefits, based on the September 1, 2014 separation. The Agency's initial determination of the claimant's eligibility for benefits and the employer's liability for benefits shall remain in effect.

DECISION:

The February 16, 2015, reference 01, decision is affirmed. The agency's initial determination of the claimant's eligibility for benefits and the employer's liability for benefits, shall remain in effect.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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