

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDSAY A NELSON

Claimant

APPEAL NO. 17A-UI-06004-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PAPARAZZI RISTORANTE INC

Employer

OC: 05/14/17

Claimant: Respondent (1)

Iowa Code Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed an appeal from the June 8, 2017, reference 03, 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 June 28, 2017. Claimant Lindsay Nelson did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. Sarah Murphy represented the employer. Exhibit 1 and Department Exhibits D-1 were received into evidence. The administrative law judge took official notice of the agency's administrative record of the claimant's wages for the period between her separation from this date and establishment 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: On May 18, 2017, Iowa Workforce Development mailed a notice of claim concerning claimant Lindsay Nelson to the employer's correct 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 of claim, which was May 30, 2017. The notice of claim was received at the employer's Des Moines address of record in a timely manner, most likely within a day or two of the May 18, 2017 mailing date. The business owner, Bruce Gerleman, received and opened the time-sensitive correspondence. At some point, Mr. Gerleman forwarded the correspondence to Chuck Collins, Chief Financial Officer. On or about May 30, 2017 Mr. Collins handed the time-sensitive correspondence to Sara Murphy, Executive Administrator. Ms. Murphy does not know how long Mr. Gerleman had the notice of claim before he passed it along to Mr. Collins or how long Mr. Collins had the notice of claim before he handed it to Ms. Murphy.

On May 30, Ms. Murphy wrote the employer's protest information on the notice of claim form. Ms. Murphy did not provide complete information on the form. Specifically, Ms. Murphy did not certify the accuracy of the information in the space provided for such certification and did not date her signature in the space provided for that signature. Ms. Murphy placed the notice of claim/protest in a stamped envelope addressed to the correct Workforce Development post office box. Ms. Murphy then placed the correspondence in a box where the employer collects the outgoing mail. At that point, it was necessary for someone from the employer to take the accumulated mail to the post office and mail it. On the afternoon of May 31, 2017, someone from the employer took the notice of claim/protest correspondence to the Des Moines Post Office and mailed it. The envelopment in which the protest was mailed bears a Des Moines, May 31, 2017, 4:00 p.m. postmark. Workforce Development received the protest on June 2, 2017.

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 received the notice of claim in a timely manner and had a reasonable opportunity to file a protest by the May 30 2017 deadline. The evidence establishes that employer's protest was filed on May 31, 2017, the postmark date. The employer's process for dealing with the time-sensitive correspondence involved routing the correspondence through the business owner and the chief financial officer before the correspondence was routed to Ms. Murphy, the person charged with preparing and filing the protest. Ms. Murphy prepared a protest on May 30, 2017, but no one from the employer mailed or otherwise transmitted the protest until the following day, when someone took the protest to the post office. At that point, the protest was late. The administrative law judge notes that the employer had actually been provided with 12 days in which to file the protest, rather than the 10-day statutory deadline because the deadline would otherwise have fallen on the Sunday before Memorial Day. The employer's failure to file a protest by the May 30, 2017 was attributable to the employer's internal processes. The late filing of the protest was not attributable to Workforce Development error or misinformation or delay or other action of the United States Postal Service. Accordingly, there is not good cause to treat the late protest as a timely protest. Because the protest was untimely, the employer has failed to preserve its right to challenge liability on the claim. Because the protest was untimely, the administrative law judge lacks jurisdiction to disturb Workforce Development'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.

DECISION:

The June 8, 2017, reference 03, 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/scn