

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN D SIGNS

Claimant

APPEAL NO. 07A-UI-08271-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARVER ACE HARDWARE

c/o **GARY O'DONNELL**

Employer

**OC: 07/29/07 R: 02
Claimant: Respondent (1)**

Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

Carver Ace Hardware filed an appeal from the August 28, 2007, reference 03, decision that allowed benefits and found the employer's protest untimely. After due notice was issued, a hearing was held by telephone conference call on September 12, 2007. The claimant did not participate. The employer participated through Store Manager Lonnie Green. The administrative law judge took official notice of Agency records that indicate the claimant has requalified for benefits since separating from this employer. Department Exhibit D-1 was received into evidence.

ISSUE:

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: Claimant's notice of claim was mailed to the employer's address of record on August 6, 2007. 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 August 16, 2007. The notice of claim was received at the employer's address of record on or about August 8, 2007. Store Manager Lonnie Green opened the correspondence when it arrived. Mr. Green retrieved information from the claimant's personnel file and drafted the employer's protest on August 13, 2007. Mr. Green attempted to fax the employer's protest on August 13, 2007. Mr. Green stayed near the fax machine long enough to see a message that fax machine was in the process of establishing a connection, but not long enough to confirm successful connection or successful transmission of the protest to Iowa Workforce Development. The employer's fax machine prints out a fax report after a successful transmission, but did not print out such a report following the attempted transmission on August 13. The employer's protest had not been successfully transmitted or received by Iowa Workforce Development. Mr. Green was then away from the workplace for several days and returned on August 20, 2007. Mr. Green spent a couple days going through

the contents of his in-box. On August 23, Mr. Green discovered the protest form in his in-box and faxed the document to Iowa Workforce Development. The employer's faxed protest was received by the Unemployment Insurance Service Center on August 23, 2007.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 24.35(1) provides:

(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.

871 IAC 24.35(2) provides:

(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 evidence in the record establishes that the employer failed to file a timely protest. The evidence indicates that the employer had the means to confirm a successful transmission of the protest on August 13, but did not do so. The greater weight of the evidence indicates that the protest was not received until August 23, which was one week after the protest deadline. The weight of the evidence further establishes that the untimely protest was not attributable to Agency error or misinformation or delay or other action of the United States Postal Service. 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 August 28, 2007, reference 03, 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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