

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MIYALA F MINGOMBA
Claimant

APPEAL NO. 14A-UI-12156-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCHENKER INC
Employer

OC: 10/26/14
Claimant: Respondent (2/R)

Iowa Code Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

ADP/Talx filed a timely appeal on behalf of the employer from the November 13, 2014, reference 02, decision that allowed benefits to the claimant provided he was otherwise eligible, that held the employer's account could be charged for benefits and that found the employer's protest was untimely. After due notice was issued, a hearing was held by telephone conference call on February 26, 2015. Claimant Myala Mingomba was not available at the number he had provided for the hearing and did not participate. Shirley Woods of ADP/Talx represented the employer. French – English interpreter Mulonda Mwangilwa was available to assist with the hearing. Department Exhibits D-1, D-2 and D-3 were received into evidence.

In entering this decision, the administrative law judge has taken official notice of the special fax number that the Unemployment Insurance Service Center provides to Talx/Equifax for submission of protest materials. That number is 515-242-0403.

ISSUES:

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's representative of record is ADP, L.L.C./Talx UCM Services, Inc. The employer's address for record is a ADP/Talx post office box in Saint Louis, Missouri. On October 29, 2014, 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 November 10, 2014. The notice of claim was received at the employer's address of record on November 3, 2014.

On November 10, 2014, Shirley Woods, ADP/Talx Customer Service Representative, prepared the employer's protest for transmission to Iowa Workforce Development. The employer's protest materials consisted of 30 pages. At 11:38 a.m. on November 10, 2014, Ms. Woods

electronically forwarded the employer's protest in the ADP/Talx computer system to cue it for electronic transmission to Iowa Workforce Development. At 1:28 p.m., Ms. Woods received a message from the ADP/Talx computer system that the attempt to electronically transmit the protest had failed. Ms. Woods then printed out the 30 pages of protest materials and, at 4:30 p.m. on November 10, 2014, scanned them into a fax machine for transmission to Iowa Workforce Development. Ms. Woods did not confirm successful transmission of the protest materials before she left work for the day. At 6:03 p.m., the fax machine generated a message that the protest packet had successfully transmitted three of the 30 pages to Iowa Workforce Development. One of the pages successfully transmitted on November 10, 2014 was the protest letter. That document clearly indicated it was in response to the notice of claim. That document provided the claimant's identifying information, the employer's identifying information, and the basis for the protest. The weight of the evidence indicates that the Agency received the employer's protest on November 10, 2014.

On the morning of November 11, 2014, Ms. Woods discovered that only three of the 30 pages had been transmitted. Ms. Woods faxed the employer's entire protest materials to Workforce Development at 9:32 a.m. and the Agency received those materials on November 11, 2014.

The number to which Ms. Woods directed the employer's fax, 515-242-0403, is a special fax number that Iowa Workforce Development provides to Talx/Equifax for submission of protest materials on behalf of employers. It is not one of the three fax numbers that appear on the notice of claim form.

REASONING AND CONCLUSIONS OF LAW:

Iowa Admin. Code r. 871-24.35(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.

Iowa Admin. Code r. 871-24.35(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.

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 weight of the evidence establishes that the employer did indeed file a timely protest on November 10, 2014. The Agency's receipt of the November 10, 2014 protest letter on that date was sufficient establish a timely protest. In light of the timely protest, this matter will be remanded to the Benefits Bureau so that that Agency can proceed with a fact-finding interview.

DECISION:

The November 13, 2014, reference 02, decision is reversed. The employer's protest was timely. The matter is remanded to the Benefits Bureau for a fact-finding interview.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs