

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STEVEN MARIETTE**  
Claimant

**APPEAL NO. 17A-UI-02271-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KC FLYNN**  
**SUBURBAN LUMBER CO INC**  
Employer

**OC: 01/15/17**  
**Claimant: Respondent (1)**

Iowa Code section 96.6-2 - Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer filed an appeal from the February 24, 2017, reference 01, 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 held the employer's protest could not be considered because it was untimely. After due notice was issued, a telephone hearing was held on March 23, 2017. Claimant Steven Mariette did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. Kevin "KC" Flynn represented the employer represented the employer and presented additional testimony through Doug Blanchard. Exhibit 1 and Department Exhibit D-1 were received into evidence. The administrative law judge took official notice of the agency's administrative record of wages paid to the claimant, which record reflects that the claimant requalified for benefits subsequent to his separation from this employer and prior to establishing the claim for benefits that was effective January 15, 2017. The administrative law judge took official notice of the agency's record of the employer's address of record, which agency record indicates use of the same address of record since January 2011.

**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 January 18, 2017, Iowa Workforce Development mailed a notice of claim concerning claimant Steven Mariette to the employer's address of record. That address of record was as follows:

KC FLYNN  
SUBURBAN LUMBER CO INC  
PO BOX 8176  
CEDAR RAPIDS IA 52408

Workforce Development records reflect that the agency has used that same address of record for the employer since January 2011. 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 January 30, 2017. The notice of claim was received at the employer's address of record in a timely manner, prior to the deadline for protest. The notice of claim most likely arrived in the employer's post office box no later than January 20, 2017. Doug Blanchard, Controller, collected the notice of claim correspondence from the employer's post office box and placed it in a box in a closet where he was keeping mail for Kevin "KC" Flynn, President of Suburban Lumber Company, Inc. Mr. Flynn had left for vacation on January 14, 2017 and returned to work on February 20, 2017. Mr. Flynn did not leave anyone in charge of reviewing and responding to time-sensitive correspondence, such as correspondence from Workforce Development. Mr. Flynn reviewed the correspondence upon his return from vacation and completed the employer's protest information on the form. On February 21, 2017, the employer faxed the completed notice of claim form to Iowa Workforce Development. The agency received the faxed protest on February 21, 2017 and marked it late.

Workforce Development reflect that claimant Steven Mariette worked in and was paid wages for insured work exceeding ten times his weekly benefit amount between his 2015 separation from Suburban Lumber Company and January 15, 2017, when Mr. Mariette established his claim for unemployment insurance benefits.

#### **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 reasoning and holding of the court are 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 at the correct address of record. The address of record was the same address information the employer that had been on file with and used by Iowa Workforce Development since January 2011. The employer had a reasonable opportunity to file a timely protest by the January 30, 2017 deadline. The administrative law judge notes that the employer had an extra two days to file the protest, over and above the 10-day deadline the law imposes, because the protest deadline would otherwise have fallen on Saturday, January 28 and was extended by operation of law to the next working day, Monday, January 30. The employer's decision not to delegate the responsibility for reviewing and responding to time-sensitive correspondence while Mr. Flynn was away on vacation does not provide good cause to treat the late protest as a timely protest. The employer's late protest was not attributable to Workforce Development error or misinformation or delay or other action of the United States Postal Service. Accordingly, the administrative law judge lacks jurisdiction to disturb the agency'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 February 24, 2017, reference 01, decision is affirmed. The employer's protest was untimely. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs