

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOSHUA A SCHROEDER
Claimant

APPEAL NO. 22A-UI-04160-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

JAI MATA LAKSHMI INC
Employer

OC: 01/09/22
Claimant: Respondent (1)

Iowa Code Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

On February 8, 2022, the employer filed a timely appeal from the February 3, 2022 (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 hearing was held by telephone conference call on March 17, 2022. Claimant, Joshua Schroeder, did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. Justin Burns, Chef/Kitchen Manager, represented the employer. Exhibit 1 and Department Exhibit D-1 were received into evidence.

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 12, 2022, Iowa Workforce Development mailed a notice of claim concerning the above claimant to the employer's Davenport 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 January 24, 2022. The notice of claim was received at the employer's address of record in a timely manner, prior to the deadline for protest. The employer did not file a protest by the January 24, 2022 protest deadline. At some point, Claudia Anderson, General Manager, completed the employer's protest information on the notice of claim form. Ms. Anderson signed to certify the accuracy of the information, but did not date her signature in the space provided. The employer faxed the protest to Iowa Workforce Development. On January 28, 2022, Iowa Workforce Development Customer Service date-stamped the faxed protest as received on January 28, 2022.

REASONING AND CONCLUSIONS OF LAW:

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 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.

Iowa Administrative Code Rule 871-24.8(2)(a) and (b) provide as follows:

(2) Responding by employing units to a notice of the filing of an initial claim or a request for wage and separation information and protesting the payment of benefits.

a. The employing unit which receives a Form 65-5317, Notice of Claim, or a Form 68-0221, Request for Wage and Separation Information, must, within ten days of the date of the notice or request, submit to the department wage or separation information that affects the individual's rights to benefits, including any facts which disclose that the individual separated from employment voluntarily and without good cause attributable to the employer or was discharged for misconduct in connection with employment.

b. The employing unit may protest the payment of benefits if the protest is postmarked within ten days of the date of the notice of the filing of an initial claim. In the event that the tenth day falls on a Saturday, Sunday or holiday, the protest period is extended to the next working day of the department. If the employing unit has filed a timely report of facts that might adversely affect the individual's benefit rights, the report shall be considered as a protest to the payment of benefits.

Iowa Administrative Code Rule 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 via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

- c. If transmitted by any means other than those outlined in paragraphs 24.35(1)"a" and "b", on the date it is received by the division.

Iowa Administrative Code Rule 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.

The employer's protest was untimely. The employer's late protest was filed on January 28, 2022, when Iowa Workforce Development received the faxed protest. The employer received the notice of claim in a timely manner, prior to the protest deadline. The employer had a reasonable opportunity to file a protest by the January 24, 2022 protest deadline. Because the 10th day following the mailing date of the notice of claim was January 22, 2022, a Saturday, the employer actually had the benefit of an additional two days in which to file a timely protest by the January 24, 2022 extended deadline. The employer's sole witness for the appeal hearing lacked personal knowledge concerning the timeliness of protest issue. The employer elected not to present testimony from persons with personal knowledge of the timeliness of protest issue, even though the hearing notice clearly set forth the issue to be addressed at the appeal hearing. Though the employer's appeal letter states the protest was faxed, the employer's witness for the hearing was under the erroneous belief that the protest had been mailed. The protest letter references unsuccessful attempts to fax the protest before it was finally successfully transmitted. The employer presented no testimony on that alleged issue. Iowa Workforce Development provides three telephone numbers to which employer's may fax protests. There is no reason to believe those numbers were not functional and available to receive the employer's faxed protest at all relevant times. The employer also had the option of mailing the protest. The late filing of the protest was attributable to the employer's delayed action. The late filing was not attributable to Workforce Development error or misinformation or to 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 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 3, 2022 (reference 01) decision, 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.



James E. Timberland
Administrative Law Judge

March 29, 2022
Decision Dated and Mailed

jet/kmj