

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MACKENZIE K RUMSEY
Claimant

APPEAL NO. 13A-UI-12748-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PAYROLL TAX DEPT
ROBERT HALF CORPORATION**
Employer

**OC: 10/13/13
Claimant: Respondent (4)**

Iowa Code Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed an appeal from the November 5, 2013, reference 02, decision that allowed benefits and that found the employer's protest untimely. A telephone hearing was set for December 6, 2013 and the parties were properly notified by notice mailed on November 20, 2013. David Laird was available on behalf of the employer. The claimant did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Upon review of the administrative file and the documents the employer attached as part of its appeal packet, the administrative law judge concludes that a decision providing the appropriate remedy can be entered without need for a hearing. The administrative law judge hereby receives the employer's appeal packet into the record as Exhibit One and takes official notice of the agency's administrative copy of the notice of claim/protest as received and processed by the Unemployment Insurance Service Center. The administrative law judge also takes official notice of the Agency's administrative record (WAGE A and WAGE C) indicating that the claimant has earned ten times her weekly benefit amount since separating from the employer.

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: On October 16, 2013, 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 October 28, 2013. The notice of claim was received at the employer's address of in a timely manner, prior to the deadline for protest. On October 28, 2013 at 3:40 p.m., the employer faxed the notice of claim/protest form to the Unemployment Insurance Service Center. The employer has provided a fax transmission report that indicates successful transmission of the single page

protest at that time. The notice of claim/protest document, as received and processed by the Unemployment Insurance Service Center, contained fax transmission at the top of the document that indicates the material was faxed on October 28, 2013 at 3:40 p.m. For some unexplained reason, the Unemployment Insurance Service Center file-stamped the protest as being received on October 29, 2013.

Workforce Development records indicate that the claimant worked in and was paid wages for insured work equal to ten times her weekly benefit after she separated from this employer in 2012 and before she filed the claim for benefits that was effective October 13, 2013.

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 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 timely. The evidence establishes that the employer successfully faxed the protest to Iowa Workforce Development on October 28, 2013. The evidence establishes that the Unemployment Insurance Service Center received the faxed protest on October 28, 2013, but erroneously documented that it had received the protest one day late on October 29, 2013.

Because the employer's protest was timely, and because the claimant has earned ten times her weekly benefit amount since separating from the employment and prior to establishing her claim for benefits, the employer's account will be relieved of charges for benefits paid to the claimant in connection with the October 13, 2013 original claim. The claimant remains eligible for benefits in connection with the October 13, 2013 original claim, provided she is otherwise eligible.

DECISION:

The Agency representative's November 5, 2013, reference 02, decision is modified as follows. The employer's protest was timely. The employer's account shall be relieved of charges for benefits paid to the claimant in connection with the October 13, 2013 original claim. The claimant remains eligible for benefits in connection with the October 13, 2013 original claim, provided she is otherwise eligible.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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