

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

TRISTEN J MILLER
Claimant

APPEAL NO. 18A-UI-01400-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EVAN'S ALMIGHTY LAW CARE LLC
Employer

OC: 12/17/17
Claimant: Respondent (2R)

Iowa Code section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 29, 2018, 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 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 February 23, 2018. Claimant Tristen Miller did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. Evan Breuer represented the employer. Exhibit A and Department Exhibits D-1 and D-2 were received into evidence. The employer's protest materials were not available for the appeal hearing because the materials were not scanned into the Iowa Workforce Development computer system and agency staff are unable to locate the materials.

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 December 22, 2017, Iowa Workforce Development mailed a notice of claim concerning the above claimant to the employer's last-known address of record. The employer's address of record is a United States Postal Service post office box in Waukee. 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 2, 2018. On January 5, 2018, Evan Breuer, owner and operator of Evan's Almighty Law Care, L.L.C., collected mail from the employer's post office box. The notice of claim form was amongst the mail that Mr. Breuer collected at that time. Prior to January 5, 2018, Mr. Breuer had most recently collected mail from the post office box on December 29 or 30, 2017. At that time, the notice of claim had not been in the post office box. Upon receipt of the notice of claim, Mr. Breuer reviewed it, contacted the claimant, completed protest information on the notice of claim form, and then mailed the form to Iowa Workforce Development. According to the January 29, 2018, reference 02, decision, the envelope in which the protest was mailed bore a January 9, 2018 post mark.

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 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 good cause to treat the late protest as a timely protest. The evidence in the record establishes that the employer did not have a reasonably opportunity to file a timely protest by January 2, 2018 protest deadline because the employer did not receive the notice of claim in a timely manner. In the absence of evidence to indicate the notice of claim arrived at the employer's address of record prior to January 5, 2018, the administrative law judge concludes that the employer received the notice of claim on that date. The employer's protest was filed sometime between January 5, 2018 and January 9, 2018, within a reasonable time following the employer's receipt of the notice of claim. This matter will be remanded to the Benefits Bureau for adjudication of the claimant's eligibility for benefits and the employer's liability for benefits in connection with an apparent separation from the employment.

DECISION:

The January 29, 2018, reference 02, decision is reversed. The employer's protest was timely. This matter is remanded to the Benefits Bureau for adjudication of the claimant's eligibility for benefits and the employer's liability for benefits in connection with an apparent separation from the employment.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs