

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

CONNIE S MOONEY
2676 N HARRISON
DAVENPORT IA 52803

JULIE ANN MARTENS
D/B/A GREATEST GRAINS
1600 HARRISON ST
DAVENPORT IA 52803

Appeal Number: 05A-UI-00220-RT
OC: 12-05-04 R: 04
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.6-2 – Initial Determination (Timeliness of Protest)

STATEMENT OF THE CASE:

The employer, Julie Ann Martens, doing business as Greatest Grains, filed a timely appeal from an unemployment insurance decision dated December 29, 2004, reference 02, allowing unemployment insurance benefits to the claimant, Connie S. Mooney, because the employer's protest was not timely. After due notice was issued, a telephone hearing was held on January 24, 2005, with the claimant not participating. Although the claimant did call in a telephone number where she purportedly could be reached for the hearing, when the administrative law judge three times tried to call that number, he never reached the claimant. The first time the administrative law judge could not tell whether someone answered or not but was immediately disconnected. On the next two times, the administrative law judge reached a

voice mail that did not identify either the number or the person. The administrative law judge left a message both times that he was going to proceed with the hearing and if the claimant wanted to participate she needed to call before the hearing was over and the record was closed. The hearing began when the record was opened at 1:07 p.m. and ended when the record was closed at 1:18 p.m. and the claimant had not called during that time. Julie Ann Martens, participated in the hearing on her own behalf. Department Exhibit One was admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, including Department Exhibit One, the administrative law judge finds: The claimant filed a claim for unemployment insurance benefits effective December 5, 2004. A notice of the claimant's claim was sent to the employer on December 10, 2004 and received by the employer in a timely fashion. The notice indicated that a protest was due by December 20, 2004. However, the employer faxed its protest to Iowa Workforce Development on December 27, 2004, seven days late. The protest was dated December 20, 2004 but was backdated by the employer's witness, Julie Ann Martens, Owner. The protest was late because Ms. Martens was running a retail business and during the holidays she lost track of the due date of the protest. During the relevant periods of time, the employer was opened for business every day except December 25, 2004, Christmas.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the employer filed a timely protest of the claimant's claim or, if not, whether the employer can demonstrate good cause for such failure. The employer's protest was not timely and the employer did not demonstrate good cause for a delay in the filing of the protest and, therefore, the protest should not be accepted and the administrative law judge does not have jurisdiction to reach the remaining issues.
2. Whether the claimant's separation from employment was a disqualifying event. The administrative law judge does not have jurisdiction to reach that issue.
3. Whether the claimant is overpaid unemployment insurance benefits. The administrative law judge does not have jurisdiction to reach that issue.

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 Iowa Code section 96.6-2 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 the 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. Iowa Department of Job Service,

_____. The administrative law judge considers the reasoning and holding of that court in that decision to be controlling on that portion of Iowa Code section 96.6-2 which deals with a time limit in which to file a protest after notification of the filing of the claim has been mailed.

The administrative law judge concludes that the employer has the burden to prove that her protest was timely or that she had good cause for delay in the filing of her protest. The administrative law judge concludes that the employer has failed to meet her burden of proof to demonstrate by a preponderance of the evidence either that her protest was timely or that she had good cause for the delay in the filing of her protest. On its face as shown at Department Exhibit One and as set out in the Findings of Fact, the employer's protest is not timely, being seven days late. The employer's owner, Julie Ann Martens, conceded that she had faxed the protest seven days late because she was running a retail business during the holidays and lost track of the due date. The protest is dated December 20, 2004 but Ms. Martens testified that she had backdated the protest. The administrative law judge notes that Ms. Martens had certified the protest as correct when she signed it but it was not correct, being backdated. Ms. Martens also testified that the business was opened throughout the relevant period except for Christmas, December 25, 2004. Ms. Martens also testified that she had timely received the notice of claim of which the protest is a part. The administrative law judge is constrained to conclude that the employer had ample opportunity to prepare and fax the protest but did not do so in a timely fashion. The delay was not as a result of any error or omission on the part of the U.S. Postal Service or Iowa Workforce Development. The administrative law judge understands that a retail business may be very busy during the Christmas holiday but does not believe that that is an excuse for failing to timely file a protest of a claimant's claim. It is also not a reason to backdate a protest. Accordingly, the administrative law judge concludes that the employer has failed to effect a timely protest during the time period prescribed by the Iowa Employment Security Law and has further failed to demonstrate or establish good cause for such delay. Therefore, the administrative law judge concludes that the employer's protest should not be accepted and the administrative law judge lacks jurisdiction to make a determination with respect to the other issues presented including the separation of employment.

DECISION:

The representative's decision of December 29, 2004, reference 02, is affirmed. The employer has failed to file a timely protest and has not demonstrated good cause for a delay in filing such a protest and the protest is, therefore, not accepted. The decision of the representative shall stand and remain in full force and effect. The claimant, Connie S. Mooney, is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

pjs/pjs