

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BENJAMIN A GOTT**  
Claimant

**APPEAL NO. 11A-UI-14431-JTT**

**ADMINISTRATIVE LAW JUDGE  
NUNC PRO TUNC DECISION**

**TITANIA CREW LTD**  
Employer

**OC: 11/02/11  
Claimant: Respondent (1)**

Section 96.6-2 - Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the October 28, 2011, reference 02, decision that allowed benefits and that found the employer's protest untimely. After due notice was issued, a hearing was held by telephone conference call on November 30, 2011. The claimant did not participate. Mary Rains, owner, represented the employer. Exhibit One and Department Exhibit D-1 was received into evidence. The administrative law judge took official notice of the Agency's administrative record that indicates the claimant earned ten times his weekly benefit amount between the time he separated from this employer and when he filed his claim for benefits.

**ISSUE:**

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 14, 2011, 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 24, 2011. 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 was out of town on business at the time the notice of claim landed in the employer's post office box. The employer returned from her business trip late on October 20 and reviewed the notice of claim on October 21. On Friday, October 21 and Monday October 24, the employer attempted to contact a Workforce Development representative to discuss the fact that the employer did not see "terminated" as an option on the notice of claim/protest form. The form did include "discharged for misconduct" as an option. Though the employer did not check the "discharge for misconduct" box on the form, the employer wrote "Discharged 11-12-10" on the notice of claim/protest form. At 9:09 p.m. on October 25, 2011, the employer's faxed protest was received by the Unemployment Insurance Service Center at Iowa Workforce Development.

**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 untimely. The evidence establishes that the employer had a reasonable opportunity to file a timely protest. The notice of claim was waiting for the employer on Thursday, October 20, 2011, when the employer arrived back home from her business trip. The employer opened and reviewed the notice of claim on Friday, October 21, 2011. At that point, the employer still had until the stroke of midnight on the evening of Monday, October 24, 2011 to fax a timely protest. The employer's delay in addressing the notice of claim was attributable to the employer's business practices, not delay or error on the part of the United States Postal Service or Iowa Workforce Development. In addition, the answer to the employer's concern about not seeing "terminated" as an option on the notice of claim form was readily available to the employer on that very form, which contained "Discharged for Misconduct" and an option the employer could mark. That the employer knew that "terminated" was the same thing as "discharged" is indicated by the employer's handwritten notation on the form: "Discharged 11-12-10." It appears that the employer simply failed to carefully read the form. In any event, there was nothing to prevent the employer from providing remarks in the space provided and faxing the protest to Workforce Development in a timely manner by the October 24, 2011 deadline. The employer takes issue with the ten-day protest deadline, but the administrative law judge must follow the statute enacted by the Iowa Legislature.

The evidence establishes that the employer's failure to file a timely 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 stand and remain in full force and effect.

The administrative law judge notes that the employer's maximum total liability for benefits paid to the claimant was included on the notice of claim: \$305.67.

**DECISION:**

The Agency representative's October 28, 2011, reference 02, decision is affirmed. The employer's protest was untimely. The Agency's initial determination of the claimant's eligibility for benefits and the employer's liability for benefits shall stand and remain in full force and effect.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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