

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VICKIE J WEEKS

Claimant

APPEAL NO. 07A-UI-09618-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DONA PER DONA INC

Employer

**OC: 09/16/07 R: 02
Claimant: Respondent (1)**

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

Dona Per Dona, Inc. (employer) appealed a representative's October 5, 2007 decision (reference 07) that concluded Vickie J. Weeks (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the employer did not file a timely protest. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 30, 2007. The claimant participated in the hearing. Nicole Talley, the director, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer file a timely protest or establish a legal excuse for filing a late protest?

FINDINGS OF FACT:

The claimant worked for the employer for in 2006. When the claimant worked, the employer's business address was on 62nd Street in Des Moines. The claimant did not work for the employer after mid 2006.

The employer moved its business in May 2007. The claimant established a claim for unemployment insurance benefits during the week of September 16, 2007. A Notice of Claim was mailed to the employer's address of record on 62nd Street on September 21, 2007. The Notice of Claim informed the employer that a protest had to be faxed or postmarked by October 1, 2007.

The employer did not receive the Notice of Claim until October 1, 2007. Talley completed the form, but did not have access to the employer's fax machine until October 2, 2007. Talley concluded that if the employer's protest was faxed on October 2, the Department would receive the protest faster than if the employer mailed the protest on October 1, 2007. The employer faxed a protest on October 2, 2007.

When the claimant established her claim for unemployment insurance benefits, she was not taking care of any grandchildren or helping her son. The claimant had no restrictions on her availability to work as of September 16, 2007.

After the claimant worked for the employer, but before she established her claim for benefits she earned wages from subsequent employers and earned more than ten times her weekly benefits amount of \$195.00.

REASONING AND CONCLUSIONS OF LAW:

The law provides that all interested parties shall be promptly notified about an individual filing a claim. The parties have ten days from the date of mailing the Notice of Claim to protest payment of benefits to the claimant. Iowa Code § 96.6-2. Another portion of Iowa Code § 96.6-2 dealing with timeliness of an appeal from a representative's decision states 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 has held that this statute clearly limits the time to do so, and compliance with the appeal notice provision is mandatory and jurisdictional. Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979).

The reasoning and holding of the Beardslee court is considered controlling on the portion of Iowa Code § 96.6-2 which deals with the time limit to file a protest after the Notice of Claim has been mailed to the employer. The facts indicate the employer received the Notice of Claim on October 1 or the last day of the ten-day deadline to file a protest. The employer did not file the protest until October 2, 2007. The employer filed a late protest. Since the employer could have mailed the completed protest on October 1, 2007, instead of waiting one day to fax the protest, the facts do not establish a legal excuse for filing a late protest. 871 IAC 24.35(2). Therefore, the Appeals Section has no legal jurisdiction to review the reasons for the claimant's employment separation and the employer's account cannot be relieved from charge. See Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979); and Pepsi-Cola Bottling Company v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

After the claimant worked for the employer but prior to establishing her claim for benefits, she earned ten times her weekly benefit amount from subsequent employment. As a result, there is no legal consequence to the claimant as a result of this decision.

DECISION:

The representative's October 5, 2007 decision (reference 07) is affirmed. The employer did not file a timely protest or establish a legal excuse for filing a late protest. Therefore, the employer's account cannot be relieved from charges for benefits paid to the claimant. Since the claimant

requalified before she established her claim for unemployment insurance benefits, she remains qualified to receive unemployment insurance benefits.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css