

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER M RASMUSSEN
Claimant

APPEAL NO. 12A-UI-04503-VST

KOZY BLANKETS AND GIFTS LLC
Employer

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/11/12
Claimant: Respondent (1)**

Section 96.6-2 – Timely Protest

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated April 13, 2012, reference 02, which held that the claimant was eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 14, 2012. Claimant participated. The employer participated by Calvin Ehltz, owner. The record consists of the testimony of Calvin Ehltz. Official notice is taken of agency record, specifically the notice of claim and the employer's response.

ISSUE:

Whether the employer filed a timely protest.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The claimant established an original notice of claim on March 11, 2012. The employer was sent a notice of claim dated March 13, 2012, with a due date for any protest on March 23, 2012. The employer received the notice of claim in sufficient time to file a timely response. The employer did not file the response until April 5, 2012.

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 section 96.6-2. Another portion of Iowa Code section 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 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 administrative law judge considers the reasoning and holding of the Beardslee court controlling on the portion of Iowa Code section 96.6-2 that deals with the time limit to file a protest after the notice of claim has been mailed to the employer. Compliance with the protest provisions is jurisdictional unless the facts of a case show that the notice was invalid. Beardslee, 276 N.W.2d 373, 377 (Iowa 1979); see also In re Appeal of Elliott, 319 N.W.2d 244, 247 (Iowa 1982). Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), protests are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983). The question in this case thus becomes whether the employer was deprived of a reasonable opportunity to assert a protest in a timely fashion. Hendren v. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC, 212 N.W.2d 471, 472 (Iowa 1973).

871 IAC 24.35(2) provides in pertinent part:

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.

In this case, the evidence established that the protest in this case was not filed in a timely manner. The claim for benefits was established on March 11, 2012, and any protest had to be postmarked by March 23, 2012. The protest was not received until April 5, 2012. Iowa law provides that a protest can be timely if the delay is due to department error or misinformation or to delay or other action of the United States Postal Service. The delay in this case was due to error on the part of the employer. Accordingly, the protest is not timely and the administrative law judge does not have jurisdiction to rule on the merits of the separation of employment.

DECISION:

The decision of the representative dated April 13, 2012, reference 02, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs