

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SEAN E JOHNSON
Claimant

APPEAL NO. 11A-UI-10423-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARY J MAASSEN
Employer

**OC:07/03/11
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 July 27, 2011, reference 02, which held that the employer failed to file a timely protest. After due notice, a telephone conference hearing was scheduled for and held on August 30, 2011. Neither party responded to the hearing notice and no hearing was held. There is no voice recording. The record consists of the administrative file.

ISSUE:

Whether the employer filed a timely protest.

FINDINGS OF FACT:

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

The claimant established an original claim for benefits on July 3, 2011. A notice of claim was mailed to the employer on July 8, 2011. The employer faxed a protest on July 20, 2011.

REASONING AND CONCLUSIONS OF LAW:

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 July 3, 2011, and any protest had to be postmarked by July 18, 2011. The protest was not received until July 20, 2011. 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 employer failed to participate in the hearing and therefore there is no explanation from the employer on why the protest was late. Accordingly, the administrative law judge has no choice but to conclude that 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 July 27, 2011, reference 02, is affirmed. The employer failed to file a timely protest.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs