

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRITTANY S DANA

Claimant

APPEAL 17A-UI-03920-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SIMPLY ESSENTIALS LLC

Employer

OC: 03/12/17

Claimant: Appellant (2R)

Iowa Code § 96.6(2) - Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 31, 2017, (reference 07) unemployment insurance decision that allowed benefits and found the protest untimely. After due notice was issued, a hearing was held on May 3, 2017. The claimant did not respond to the notice of hearing and did not participate. The employer participated by way of Clint Richmond, human resources manager. Department's Exhibit D-1 was received. No hearing was held as there was sufficient evidence in the appeal letter and administrative record to resolve the matter without testimony.

NOTE TO EMPLOYER: To become a SIDES E-Response participant, you may send an email to iwd-sidesinfo@iwd.iowa.gov. To learn more about SIDES, visit <http://info.uisides.org>.

ISSUE:

Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant's notice of claim was mailed to the employer's address of record on March 15, 2017. The address on file at the time of protest was in care of Angie Roberts. Ms. Roberts passed away unexpectedly in early March, shortly before the notice of claim was mailed. Consequently, the employer had to amend its mail delegation duties until her position was filled, and there was a delay in forwarding mail to the appropriate contact person. In addition, Mr. Richmond, who resides at the local Charles City location (not Overland Park), was out of the office March 20 through 23, 2017. He was then tending to his father who was hospitalized with leukemia until

March 27, 2017, which was also the day the claim was due. Mr. Richmond returned to the office on March 28, 2017 and saw the notice of claim. He submitted his response before 9:00 a.m. The claimant's February 9, 2017, separation from employment has not yet been the subject of a Benefits Bureau fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether employer's protest is timely. The administrative law judge concludes it is.

Iowa Code § 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.

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. Iowa Dep't of Job Serv.*, 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) that deals with the time limit to file a protest after the notice of claim has been mailed to the employer.

The employer's person of contact for mail, Angie Roberts, passed away unexpectedly, shortly before the notice of claim was mailed to the employer's Overland Park location. Understandably, the delegation of mail, as previously handled by Ms. Roberts was temporarily delayed. By the time the notice of claim was forwarded to Mr. Richmond at the Charles City location for handling, he was out of the office and then at the hospital with his father. He returned to the office March 28, 2017, one day after the due date to respond. He responded to the notice of claim before 9:00 a.m. one day after the due date. Based on the evidence presented, the employer made a good faith effort to file a timely protest one day late, after mail was unexpectedly delayed due to the death of Ms. Roberts. The administrative law judge concludes the employer's notice of protest shall be accepted as timely.

DECISION:

The March 31, 2017, (reference 07) unemployment insurance decision is reversed. The employer has filed a timely protest.

REMAND: The separation issue is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn