

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**AMBER L OBERFOELL**  
Claimant

**MERCY HEALTH SERVICES – IOWA CORP**  
Employer

**APPEAL 17A-UI-01995-DB-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/04/16**  
**Claimant: Respondent (2R)**

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Iowa Code § 96.6(2) - Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer/appellant filed an appeal from the February 10, 2017 (reference 03) unemployment insurance decision which found that the employer's protest cannot be accepted because it was not timely. The parties were properly notified of the hearing. A telephone hearing was held on March 15, 2017. The claimant, Amber L. Oberfoell, participated personally. The employer, Mercy Health Services – Iowa Corp., participated through witness Angela Faber. The administrative law judge took administrative notice of the claimant's unemployment insurance records including the fact-finding documents.

**ISSUE:**

Did the employer file a timely protest?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is registered to receive documents through the SIDES system. The employer did not receive a notice of claim. When employer became aware of the claim after receiving the fourth quarter Statement of Charges dated December 31, 2016, the employer filed a timely protest to the Statement of Charges when it forwarded its protest on January 21, 2017.

There has been no initial investigation and determination regarding claimant's separation from this employer. The question of whether the claimant is separated from employment will be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes employer's protest is timely.

Iowa Code § 96.6(2) provides:

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 representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding § 96.8, subsection 5.

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 did not have an opportunity to protest the notice of claim because the notice was not received. Without timely notice of a disqualification, no meaningful opportunity for appeal exists. *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

Iowa Code section 96.7(2)a(6) provides:

*2. Contribution rates based on benefit experience.*

a. (6) Within forty days after the close of each calendar quarter, the department shall notify each employer of the amount of benefits charged to the employer's account during that quarter. The notification shall show the name of each individual to whom benefits were paid, the individual's social security number, and the amount of benefits paid to the individual. An employer which has not been notified as provided in section 96.6, subsection 2, of the allowance of benefits to an individual, may within thirty days after the date of mailing of the notification appeal to the department for a hearing to determine the eligibility of the individual to receive benefits. The appeal shall be referred to an administrative law judge for hearing and the employer and the individual shall receive notice of the time and place of the hearing.

The employer filed a timely protest to the fourth quarter statement of charges. Therefore, the protest shall be accepted as timely.

**DECISION:**

The February 10, 2017 (reference 03) is reversed. The employer did file a timely protest.

**REMAND:**

The separation issue delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

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