

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEREK S TURNER
Claimant

APPEAL NO: 12A-UI-02470-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STREAM INTERNATIONAL INC
Employer

OC: 07/03/11
Claimant: Respondent (4/R)

Iowa Code § 96.7(6) – Protest from Statement of Charge
Iowa Code § 96.6(2) – Timeliness of Protest

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's March 2, 2012 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the employer had not filed a timely protest. The claimant responded to the hearing notice, but was not available for the hearing. Patty Sager, a TALX representative, and Sharon Robertson appeared on the employer's behalf. Based on the evidence, the employer's arguments, and the law, the administrative law judge finds the employer made a timely protest after learning the claimant had filed a claim for unemployment insurance benefits.

ISSUES:

Should the Claims Section determine whether the claimant is qualified to receive benefits after the employer timely appealed the Statement of Charges?

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

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits during the week of July 3, 2012. On July 11, 2012, the Department records indicate a notice of claim was mailed to the employer's representative, TALX. The notice indicated the claimant had filed a claim for benefits and the maximum amount of money that could be charged against the employer's account. The notice of claim stated the employer had a deadline of July 21, 2011 to protest charges to its account.

TALX did not receive the July 11 notice of claim. Neither TALX nor the employer knew the claimant had filed a claim for benefits until TALX received a Statement of Charges in February 2012. The employer protested the Statement of Charges on February 21, 2012. The Department considered the protest from the Statement of Charges as the protest from the notice of claim.

REASONING AND CONCLUSIONS OF LAW:

An employer who has not been notified by a notice of claim that a claimant has established a claim and the maximum amount that could be charged to its against has 30 days to appeal and request that the Department determine the claimant's eligibility to receive benefits after receiving a statement of charges against its account. Iowa Code § 96.7(6).

Even though the Department records indicate a notice of claim was generated, the evidence presented establishes that TALX did not receive the notice of claim. After receiving a statement of charges, the employer made a timely request that the Department determine the claimant's eligibility to receive benefits based on a May 2011 employment separation.

In the alternative, 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) that 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 never received the notice of claim. Therefore, the employer did not have a reasonable opportunity to file a timely protest. 24.35(2). The employer established a legal excuse to protest the claimant's receipt of benefits late. This matter will be remanded to the Claims Section to investigate and determine whether the claimant is qualified to receive benefits based on a May 2011 employment separation.

DECISION:

The representative's March 3, 2012 determination (reference 01) is modified. The employer did not receive a notice of claim. After receiving a February 2012 statement of charges, the employer made a timely request to have the Claims Section determine the claimant's eligibility to receive benefits. This matter is **Remanded** to the Claims Section to determine whether the claimant is qualified to receive benefits based on his May 2011 employment separation with this employer.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw