

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JESSE L WHITE

Claimant

APPEAL 16A-UI-13061-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SOUTHERN PRAIRIE YMCA INC

Employer

OC: 11/13/16

Claimant: Respondent (2-R)

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Employer filed an appeal from the December 6, 2016, (reference 02) decision that found the protest untimely and allowed benefits. After due notice was issued, a hearing was held by telephone conference call on December 28, 2016. Claimant participated. The employer participated by office manager Raquel Linch.

ISSUE:

Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Claimant's notice of claim was mailed to employer's address of record on November 18, 2016, and was received by employer within ten days. The notice of claim contains a warning that any protest must be postmarked, faxed or returned not later than ten days from the initial mailing date.

The employer faxed its protest to Iowa Workforce Development (IWD) on November 22, 2016. The employer's fax machine does not provide a confirmation report that the transmission was successful or if there was an error. If there is an error, the employer is not aware of it unless someone calls the employer. On December 1, 2016, Ms. Linch called IWD to verify that the protest had been faxed successfully. The IWD employee told Ms. Linch that IWD had not received the employer's protest. After Ms. Linch was informed the November 22, 2016 fax was not successful, she then refaxed the protest on December 1, 2016, which was received successfully.

On prior occasions, claimant has been instructed by IWD to wait a day or two to contact IWD to see if the document is in the IWD system. The employer successfully filed its protest on December 1, 2016.

REASONING AND CONCLUSIONS OF LAW:

The first 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 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 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 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.

The employer received the notice of claim within the protest period but has established good cause for filing its protest after the deadline. The employer filed a protest in a timely manner on November 22, 2016, but the agency did not receive this fax transmission. The employer did not have any reason to believe its fax transmission was not transmitted successfully. The employer was not aware there were any issues with its protest until it called IWD on December 1, 2016 to verify IWD that IWD had received its protest. Immediately upon receipt of information that its November 22, 2016 protest was not received, the employer re-filed its protest on December 1, 2016. Therefore, the protest shall be accepted as timely.

DECISION:

The December 6, 2016, (reference 02) unemployment insurance decision is reversed. The employer 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.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs