

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAMIKA SWEAREGENE
Claimant

APPEAL NO: 14A-UI-00790-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRECHTEL GROUP LLC
Employer

**OC: 12/15/13
Claimant: Respondent (1)**

Section 96.6-2 – Timeliness of Protest
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated January 7, 2014, reference 03, that concluded its protest could not be accepted because it was not filed timely. A telephone hearing was held on February 13, 2014. Proper notice of the hearing was given to the parties. The claimant did not participate in the hearing. Bruce Brechtel participated on behalf of the employer. Exhibit A-1 was admitted into evidence at the hearing.

ISSUE:

Did the employer file a timely protest of the claim?

FINDINGS OF FACT:

A notice of claim was mailed to the employer's address of record on December 18, 2013, and was received by the employer within ten days. The notice informed the employer of potential charges to its account of \$34.67. The notice of claim stated that any protest of the claim had to be faxed or postmarked by the due date of December 28, 2013. The employer's protest was filed on January 3, 2014, which was after the time period for protesting had expired. The delay in filing the protest was because staff members overlooked the notice of claim.

An unemployment insurance decision was mailed to the employer's last-known address of record on January 7, 2014. The decision concluded the protest could not be accepted because it was not filed timely and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by January 17, 2014.

The employer received the decision within the ten-day period for appealing the decision. A written appeal was filed by fax on January 23, 2014, which is after the time period for appealing had expired. It took a few days to gather information about the claimant's employment because she worked for the employer under different ownership.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant filed a timely appeal.

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. Iowa Code § 96.6-2. The rules provide that an appeal can be deemed timely if the failure to timely file the appeal was due to delay or other action of the United States Postal Service. 871 IAC 24.35(2). This rule would apply in this case because the employer did not get the decision until the due date.

The next issue in this case is whether the employer filed a timely protest of the claimant's claim for unemployment insurance benefits

Iowa Code section 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.

Part of the same section of the unemployment insurance law deals with the timeliness of an appeal from a representative's decision and states an appeal must be filed within ten days after the date the decision was mailed to the parties. On the issue of timeliness of an appeal, the Iowa Supreme Court concluded that when a statute creates a right to appeal and limits the time for appealing, compliance with the time limit is mandatory and jurisdictional. Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979).

This reasoning should also apply to the time limit for filing a protest after a notice of claim has been mailed to the employer. The employer failed to file a protest within the time period prescribed by Iowa Code Section 96.6-2. The failure to file a timely protest was not due to any Agency error or misinformation or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) would excuse the delay in filing the protest. Since the protest was untimely, there is no jurisdiction to make a decision regarding the separation from employment. See Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979); Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979). The employer is chargeable for \$34.67 in benefits paid to the claimant.

DECISION:

The unemployment insurance decision dated January 7, 2014, reference 03, is affirmed. The decision that the employer's protest was untimely remains in effect.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs