

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

WILLIAM B STRANGER
Claimant

APPEAL NO: 18A-UI-07406-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**STAPLES, THE OFFICE SUPERSTORE
EAST**
Employer

OC: 06/03/18
Claimant: Respondent (4)

Iowa Code Chapter 95 – Requalification
Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 2, 2018, (reference 04) unemployment insurance decision that allowed benefits and found the protest untimely. After due notice was issued, a hearing was conducted by telephone conference call on July 27, 2018. Claimant did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. Employer participated through Maureen Fitzgerald, team lead, for Corporate Cost Control. Department's Exhibit A and Employer Exhibit 1 were received into evidence. The administrative law judge took official notice of the administrative record, including the Notice of Claim and protest. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the employer's protest timely?

Has the claimant requalified for benefits since the separation from this employer?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The claimant's notice of claim was mailed to the employer's corporate address of 500 Staples Drive Framingham, Massachusetts 01702, on June 7, 2018 (Department Exhibit A). The notice of claim contained a warning that a response was due on June 18, 2018.

Corporate Cost Control notified the state of Iowa on March 28, 2018 that it would become the employer's third party administrator effective April 1, 2018, and that the correct mailing address would be PO Box 1180 Londonderry, New Hampshire, 03053 (Employer Exhibit 1). However, the notice of claim was not sent to the anticipated vendor, which delayed a response. The power of attorney request was completed in July 2018, over three months after the initial request. The employer forwarded the notice of claim to Maureen Fitzgerald on June 20, 2018, and she submitted a response on the same day (Department Exhibit A).

The claimant has requalified for benefits since the January 16, 2018 separation from the employer.

REASONING AND CONCLUSIONS OF LAW:

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

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.

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 received the notice of claim within the protest period but has established a legal excuse for filing its protest after the deadline. Iowa Admin. Code r. 871-24.35(2).

The undisputed evidence is the employer's power of attorney, including its official mailing address was under review with IWD during a period which coincided with the claim being mailed to a Massachusetts address for the employer. Accordingly, the employer anticipated Corporate Cost Control would be receiving its claims effective April 2018. However, the employer's agent was unable to receive the notice of claim to respond due to the transition and review of its power of attorney with IWD, which was not finalized until July 2018. The employer did not have an opportunity to protest the notice of claim because the notice was not received in a timely fashion. Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). Ms. Fitzgerald, the employer representative, filed a protest within one day of the notice of protest receipt. Therefore, the protest shall be accepted as timely.

The administrative law judge further concludes that the claimant has requalified for benefits since the separation from this employer. Accordingly, benefits are allowed and the account of the employer shall not be charged.

DECISION:

The July 2, 2018, (reference 04) unemployment insurance decision is modified in favor of the appellant. The employer has filed a timely protest and the claimant has requalified for benefits since the separation. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer shall not be charged.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/rvs