

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TANYA E PHILLIPS**  
Claimant

**APPEAL NO: 12A-UI-14846-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**2 TONE INC**  
**BLUEBIRD DINER**  
Employer

**OC: 06/17/12**  
**Claimant: Respondent (4/R)**

Iowa Code § 96.6(2) – Timeliness of Protest

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's December 17, 2012 determination (reference 03) that held the claimant eligible to receive benefits and the employer's account subject to charge because the employer had not filed a timely protest. The claimant did not respond to the hearing notice or participate in the hearing. Thomas Connolly, the owner, appeared on the employer's behalf. Based on the evidence, the employer's arguments, and the law, the administrative law judge concludes the employer filed a timely protest.

**ISSUE:**

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

**FINDINGS OF FACT:**

After the claimant's employment with the employer ended, she reopened her claim for benefits during the week of November 25, 2012. On November 28, 2012, a notice of claim was mailed to the employer. The notice of claim informed the employer the due date to protest was December 10, 2012.

The employer believes he received the notice of claim by December 1 or 3. The employer completed the form and attempted to fax the completed form on December 5 or 6. The employer's fax would not successfully transmit. The employer called the local Workforce office to find out if there was another fax number the employer could fax the protest to.

When the employer could not successfully transmit the protest by fax, the employer mailed the protest on December 10, 2012. The employer mailed the protest before the deadline. The employer's protest was postmarked December 11, 2012.

**REASONING AND CONCLUSIONS OF LAW:**

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 determination states an appeal must be filed within ten days after notification of that determination 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) which 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 attempted to fax the completed protest on December 5 or 6. When the fax would not go through, the employer mailed the protest on December 10, 2012. Since December 10 was the deadline in which to file a protest, the employer filed a timely protest.

This matter will be remanded to the Claims Section to determine the reasons for the claimant's employment separation and whether she is qualified to receive benefits as of November 25, 2012. The reasons for her employment separation will determine if the employer's account may be subject to or exempt from charge when the employer becomes a base period employer.

**DECISION:**

The representative's December 17, 2012 determination (reference 03) is modified in the employer's favor. The employer filed a timely protest. Therefore, this matter is **Remanded** to the Claims Section to determine the reasons for the claimant's employment and whether she is qualified to receive benefits.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs