

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANGELA K MASCHMANN
Claimant

APPEAL 17A-UI-09830-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CEDAR RAPIDS HOTEL LLC
Employer

**OC: 08/06/17
Claimant: Respondent (4)**

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

STATEMENT OF THE CASE:

Cedar Rapids Hotel, LLC (employer) filed a timely appeal from the September 14, 2017, reference 03, unemployment insurance decision that allowed benefits and found the protest untimely without having held a fact-finding interview pursuant to Iowa Admin. Code r. 871-24.9(2)b. After due notice was issued, a hearing was held by telephone conference call on October 11, 2017. The claimant did not respond to the hearing notice and did not participate. The employer participated through General Manager Monica Adair. Department's Exhibit D1 was received. Employer's Exhibit 1 was received. Official notice was taken of the administrative record, specifically the claimant's database readout (DBRO) and wage history (WAGE).

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 opened her claim for benefits effective August 6, 2017 and her weekly benefit amount (WBA) is \$109.00. The notice of claim was mailed to the employer's address of record on August 28, 2017 and included a warning that a protest needed to be received by the agency by September 7, 2017. However, the employer's address had changed and it was not received at the new address until September 12, 2017. The employer filed its protest on the same day. The claimant has requalified for benefits by earning more than \$1,090.00, or ten times her WBA, since the separation from the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge finds the employer's protest timely and that the claimant has requalified for benefits. Benefits are allowed, provided the claimant is otherwise eligible, and the employer's account shall not be charged.

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 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 § 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 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). The employer filed the protest the same day it received the notice of claim. Therefore, the protest shall be accepted as timely. However, the employer is now on notice that it is responsible for changing its address with IWD by contacting the Tax Bureau or using the online system.

The claimant has requalified for benefits since the separation from this employer by earning more than \$1,090.00 in gross wages with a subsequent employer. Accordingly, benefits are allowed and the account of the employer shall not be charged.

DECISION:

The September 14, 2017, reference 03, 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.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

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