

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**RONETTE A BONNELL**  
Claimant

**APPEAL NO. 16A-UI-07536-DGT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FBG SERVICE CORPORATION**  
Employer

**OC: 01/24/16**  
**Claimant: Respondent (2-R)**

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Iowa Code § 96.6-2 – Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the June 28, 2016, (reference 04) unemployment insurance decision that allowed benefits and found the protest untimely. After due notice was issued, a hearing was held on July 27, 2016. Claimant participated. Employer participated through Tilinia Davidson, Unemployment Claims Specialist. Employer's Exhibit 1 was received.

**ISSUE:**

Is the employer's protest timely?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant's notice of claim was mailed to the employer's address of record on January 27, 2016. The employer filed its protest on June 3, 2016. The claimant's January 19, 2016, separation from employment has not yet been the subject of a Benefits Bureau fact-finding interview.

**REASONING AND CONCLUSIONS OF LAW:**

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 employer filed a protest in a timely manner on February 8, 2016, but the agency did not receive the fax transmission. Immediately upon receipt of information to that effect, the protest was re-filed. Therefore, the protest shall be accepted as timely.

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). When the Department allows employers to submit a protest by fax, the Department has the responsibility to make sure its equipment works properly and, in this case, did not.

The employer filed the protest within 10 days of receipt of the notice of claim. Therefore, the protest shall be accepted as timely.

**DECISION:**

The June 28, 2016, (reference 04) unemployment insurance decision is reversed. The employer has 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.

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Duane L. Golden  
Administrative Law Judge

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Decision Dated and Mailed

dlg/pjs