

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRISTINE P POMEROY**  
Claimant

**APPEAL NO: 14A-UI-09270-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ENGINEERED PLASTIC COMPONENTS INC**  
Employer

**OC: 08/03/14**  
**Claimant: Respondent (1)**

Iowa Code § 96.6(2) – Timely Protest

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's September 4, 2014 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the employer had not filed a timely protest. The claimant responded to the hearing notice, but was not available for the September 25 hearing. Melinda Taylor, the human resource representative at the Kalona location, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the employer did not file a timely protest or establish a legal excuse for filing a late protest.

**ISSUE:**

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

**FINDINGS OF FACT:**

The claimant worked at the employer's Kalona, Iowa location. The last day the claimant worked for the employer was February 13, 2014. The claimant resigned when she moved out of state. The claimant established a claim for benefits during the week of August 3, 2014.

On August 12, 2014, a notice of claim was mailed to the employer's address of record, at the employer's Grinnell location. The human resource representative at the Grinnell location immediately sent the notice of claim to Kalona. Taylor received the notice of claim on August 14. The notice of claim indicated the due date was August 22, 2014.

Taylor completed the form and attempted to fax the completed form on August 14, 2014. Taylor was out for the office on August 15 and 18. When she returned to work on Tuesday, August 19, she received information that the August 14 fax had not been successfully transmitted. On August 19, the employer also had a surprise visit from OSHA officials. Unfortunately, Taylor was involved with this visit and did not get an opportunity to fax the employer's completed protest to the Department again until late August 27. The Department received the employer's completed protest on the morning of August 28, 2014.

**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 Taylor received the notice of claim on August 14. She completed the form and attempted to fax it on August 14. When Taylor returned to work on August 19, she received information that the August 14 fax had not been successfully transmitted. The employer still had time to fax or mail the protest on or before August 22. Unfortunately, the employer also had an unexpected visit from OSHA officials on August 19 and Taylor was preoccupied with the OSHA visit. Taylor did not have an opportunity to send the completed protest until late August 27 or after the August 22, 2014 deadline.

The employer filed a late protest. The employer did not establish a legal excuse for filing its protest late on August 27, 2014. 871 IAC 24.35(2). I understand Taylor was very involved in the unexpected OSHA visit and if OSHA officials had not come, the protest probably would have been filed on or before August 22. The unexpected OSHA visit does not establish a legal excuse for filing a late appeal. As a result, the Appeals Bureau does not have legal jurisdiction to relieve the employer's account from charge.

**DECISION:**

The representative's September 4, 2014 determination (reference 01) is affirmed. The employer did not file a timely protest or establish a legal excuse for filing a late protest. The Appeals Bureau does not have jurisdiction to relieve the employer's account from charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs