

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DERRICK BELL**  
Claimant

**APPEAL NO: 11A-UI-15820-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DES STAFFING SERVICES INC**  
Employer

**OC: 11/06/11**  
**Claimant: Respondent (4)**

Iowa Code § 96.6(2) – Timeliness of Protest

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's November 30, 2011 determination (reference 04) that held the employer's account subject to charge because the employer filed a late protest. The claimant participated in the hearing. Stacy Navarro, the human resource coordinator, 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 established a legal excuse for filing a late protest.

**ISSUES:**

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

**FINDINGS OF FACT:**

The claimant established a claim for benefits during the week of November 6, 2011. His maximum weekly benefit amount is \$243. On November 19, 2011, the Department mailed a notice of claim to the employer indicating the claimant had filed a claim for benefits and the maximum amount of money that could be charged against the employer's account during the current benefit year was \$42.67. The notice of claim indicated the employer had until November 21, 2011, to respond to the notice.

The employer received the notice of claim before November 21. Navarro completed the form on November 21, 2011. She tried to fax the completed protest twice on November 21 at 5:05 and 5:06 p.m. The fax was not successfully transmitted either time. The next morning, November 22, Navarro faxed the completed document again and this time it was successfully transmitted to the Department.

The claimant last worked for the employer on October 27 and 28, 2010. The client ended the claimant's assignment after he reported to the job late. On October 28, 2010, the claimant informed the employer his assignment was over. Between October 28, 2010 and November 6, 2011, the claimant worked for other employers and earned more than \$10,000 in wages.

**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 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. 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) that 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 received the notice of claim before November 21, 2011, or before the initial ten-day deadline. Even though it may not be the best business practice to fax in a protest on the last day of the deadline and after 5 p.m., if the Department's fax machine had been working and the fax had been successfully transmitted, the employer would have filed a timely protest. The employer later learned the Department had problems receiving faxes at that number and was told about an email address that could be used to protest claims.

Since the employer was unable to successfully transmit the completed protest by fax until November 22, the employer filed a late protest. Under the facts of this case, since the Department's fax was not working properly, the employer established a legal excuse for filing a late protest. Therefore, under these facts, the Appeals Section has legal jurisdiction to relieve the employer's account from charge.

Since the employer established a legal excuse for filing a late appeal, the employer's account will not be charged for any benefits the claimant may receive during his current benefit year.

Since the claimant had earned requalifying wages after he worked for the employer but before he established claim for benefits, he has no legal consequence in this matter. Based on this employment separation, the claimant is qualified to receive benefits.

**DECISION:**

The representative's November 30, 2011 determination (reference 04) is modified in the employer's favor. Based on this employment separation, the claimant is qualified to receive benefits. The employer did not file a timely protest, but established a legal excuse for filing a late protest. As a result of establishing a legal excuse for filing a late appeal, the employer's account will not be charged.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw