

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ERIC M HILL
Claimant

CDI LLC
Employer

APPEAL 17A-UI-09672-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/27/17
Claimant: Respondent (2R)

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Employer filed an appeal from the September 15, 2017, (reference 03) decision that found the protest untimely and allowed benefits. After due notice was issued, a hearing was held by telephone conference call on October 5, 2017. Claimant did not register for the hearing and did not participate. The employer participated by office manager Pam Wilson. Plant manager Jack Miller registered for the hearing on behalf of the employer, but he did not attend the hearing. Employer Exhibit 1 was admitted into evidence with no objection. Official notice was taken of the administrative record with no objection.

ISSUE:

Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Claimant's notice of claim was mailed to employer's address of record on August 30, 2017, and was received by employer within ten days. The notice of claim contains a warning that the employer protest response is due ten days from the initial notice date and gave a response deadline of September 11, 2017. The employer signed its protest on September 5, 2017 and faxed its protest twice to Iowa Workforce Development (IWD) on September 8, 2017. Employer Exhibit 1. The employer faxed its protest to two different IWD fax numbers. Employer Exhibit 1. The employer's fax activity report shows that the fax was received ok by IWD on September 8, 2017 at both numbers. Employer Exhibit 1. The administrative record reflects that IWD did not receive the employer's protest response until September 13, 2017 at 15:38, which is after the ten-day period. The employer's fax activity report shows that on September 13, 2017 at 15:38 the employer faxed another document to IWD at one of the IWD fax numbers it used on September 13, 2017. Employer Exhibit 1.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether employer's protest is timely. The administrative law judge concludes it is.

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 section 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 filed a protest in a timely manner on September 8, 2017 and according to its fax activity report, it was received by IWD without any issues. Employer Exhibit 1. However, the administrative record reflects that IWD did not receive the fax transmission on September 8, 2017. The administrative record reflects that IWD received the employer's protest on September 13, 2017. 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 has presented substantial and credible evidence that it successfully faxed its protest on September 8, 2017. Employer Exhibit 1. Therefore, the protest shall be accepted as timely.

DECISION:

The September 15, 2017, (reference 03) unemployment insurance decision is reversed. The employer 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.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/scn