

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GERARDO CUELLAR
Claimant

APPEAL NO. 09A-UI-00450-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SPECK USA INC
Employer

**OC: 11/30/08 R: 02
Claimant: Respondent (1)**

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

Speck USA, Inc. (employer) appealed a representative's January 8, 2009 decision (reference 02) that concluded Gerardo Cuellar (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the employer did not file a timely protest. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 28, 2009. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. Dean Zwemke, the office manager, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer file a timely 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 30, 2008. On December 3, 2008, the Department mailed a notice 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. The notice of claim indicated the employer had until December 15, 2008, to respond to the notice.

Typically, the employer receives mail from the Department within three working days. On December 30, the Zwemke discovered the notice of claim misfiled or misplaced with other documents. This was the first time he saw the notice of claim. He immediately completed the form and faxed the form to the Department on December 30, 2008. The employer reported the claimant had quit to take other employment. The claimant returned to work for Des Moines Asphalt Company.

Between August 2, 2008, (the claimant's last day of work for the employer) and November 30, 2008, the claimant worked for another employer and earned more than ten times his weekly benefit amount.

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 which 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 on or before December 15, 2008, the initial ten-day deadline to file the protest. After the employer received the notice of claim, it was misfiled or misplaced. Even though Zwemke did not actually see the notice of claim until December 30 and took immediate action, the employer filed a late protest. Unfortunately, mistakes made in the employer's office do not constitute a legal excuse for filing a late appeal. 871 IAC 24.35(2).

Under the facts of this case the employer did not file a timely protest or establish a legal excuse for filing late appeal. Therefore, the Appeals Section has no legal jurisdiction to relieve the employer's account from charge.

After the claimant worked for the employer, but prior to establishing his claim for benefits, he earned ten times his weekly benefit amount from subsequent employment. As a result, there is no legal consequence to the claimant as a result of this decision.

DECISION:

The representative's January 8, 2009 decision (reference 02) is affirmed. The employer did not file a timely protest or establish a legal excuse for filing a late protest. As a result, the Appeals Section has no legal jurisdiction to relieve the employer's account from charge. The claimant requalified before he established his claim for unemployment insurance benefits and remains qualified to receive unemployment insurance benefits.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css