

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JONATHAN R CARTER
Claimant

APPEAL NO. 11A-UI-14628-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

AGRI-ASSOCIATES INC
Employer

OC: 10/16/11
Claimant: Respondent (2-R)

Section 96.6-2 – Timely Protest

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated November 4, 2011, reference 04, which held that the employer failed to file a timely protest. After due notice, a telephone conference hearing was scheduled for and held on December 8, 2011. Employer participated by Tim Reeve, president. The record consists of the testimony of Tim Reeve and Employer's Exhibit 1. Official notice is taken of agency records.

ISSUE:

Whether the employer filed a timely protest.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The employer does custom fertilizer and chemical applications. The claimant was hired on April 11, 2011 and worked until April 22, 2011. He stopped coming to work and did not contact the employer.

The claimant established an original claim for benefits on October 16, 2011. A notice of claim was sent to the employer on October 21, 2011. The due date for any protest was October 31, 2011. The employer did not receive the notice of claim until October 26, 2011, and sent it immediately to the accountant for response. The accountant was out of the office until November 1, 2011, at which time a protest was filed.

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 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 administrative law judge considers the reasoning and holding of the Beardslee court 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. Compliance with the protest provisions is jurisdictional unless the facts of a case show that the notice was invalid. Beardslee, 276 N.W.2d 373, 377 (Iowa 1979); see also In re Appeal of Elliott, 319 N.W.2d 244, 247 (Iowa 1982). Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), protests are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983). The question in this case thus becomes whether the employer was deprived of a reasonable opportunity to assert a protest in a timely fashion. Hendren v. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC, 212 N.W.2d 471, 472 (Iowa 1973).

One of the difficulties in this case is that the dates in the letter from the employer's CPA are incorrect. Ms. Walkup testified that the notice of claim was not received until November 26, 2011, which clearly puts receipt beyond the due date for any protest. This date is a scrivener's error on the part of Ms. Walkup because she then correctly notes that the faxed protest was sent on November 1, 2011. This means the protest was a day late. Mr. Reeve repeated the incorrect date for receiving the notice of claim in his testimony. The employer did take prompt action to send the notice of claim to Ms. Walkup and Ms. Walkup was out of the office and could not respond. Under these circumstances the administrative law judge will treat the protest as having been timely filed. This matter is remanded to claims section for further investigation of the separation issue.

DECISION:

The decision of the representative dated November 4, 2011, reference 04, is reversed. The protest will be deemed as having been timely file. This matter is remanded to the claims section for determination.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs