

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TIMOTHY L DAHLSTROM
Claimant

ARETE MATTRESS PARTNERS
Employer

APPEAL 17A-UI-03731-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/26/17
Claimant: Respondent (4)**

Iowa Code Chapter 95 – Requalification
Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 23, 2017, (reference 01) unemployment insurance decision that allowed benefits and found the protest untimely without having held a fact-finding interview pursuant to Iowa Admin. Code r. 871-24.9(2)b. After due notice was issued, a hearing was conducted by telephone conference call on April 28, 2017. Claimant participated personally. Employer participated through David Eisenbraun, managing partner. Department's Exhibit D-1 was received. The administrative law judge took official notice of the administrative record, including the Notice of Claim and protest.

NOTE TO EMPLOYER: If you wish to change the address of record, please access your account at: <https://www.myiowaui.org/UITIPTaxWeb/>. To become a SIDES E-Response participant, you may send an email to iwd-sidesinfo@iwd.iowa.gov. Please include your federal and state account numbers, and an email address of the individual who will respond to UI information requests. Once you become a SIDES participant, you will receive a Personal Identification Number (PIN) in the mail. This PIN is confidential information and you are responsible for keeping it secure. To learn more about SIDES, visit <http://info.uisides.org>.

ISSUES:

Is the employer's protest timely?
Has the claimant requalified for benefits since the separation from this employer?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The notice of claim was mailed to the employer's address of record on February 28, 2017, and was received within the protest period on March 9, 2017. The employer attempted to file its protest on March 9, 2017. Mr. Eisenbraun completed the notice of claim and then attempted to mail it from his West Des Moines office, and acknowledged he was aware of the pending due date of March 10, 2017. For unknown reasons, the envelope was not postmarked on March 9, 2017 but instead March 14, 2017 (Department Exhibit D-1). The claimant has requalified for benefits since the separation from the employer.

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 § 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 made a good faith attempt to file its notice of protest upon completion of it by Mr. Eisenbraun on March 9, 2017. For unknown reasons, the mail was delayed in being postmarked, thereby making the protest late. The administrative law judge is persuaded that based on the undisputed and credible evidence that the employer attempted to submit its notice of protest within the prescribed time. The employer received the notice of claim within the protest period but has established a legal excuse for filing its protest after the deadline. Iowa Admin. Code r. 871-24.35(2). Therefore, the protest will be accepted as timely.

The administrative law judge further concludes that the claimant has requalified for benefits since the separation from this employer. Accordingly, benefits are allowed and the account of the employer shall not be charged.

DECISION:

The March 23, 2017, (reference 01) unemployment insurance decision is modified in favor of the appellant. The employer has filed a timely protest and the claimant has requalified for benefits since the separation. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer shall not be charged.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/rvs