

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TRAVIS R BAXTER
Claimant

HAPPY TREES INC
Employer

APPEAL 17A-UI-01271-DL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/18/16
Claimant: Respondent (4)

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

STATEMENT OF THE CASE:

The employer filed an appeal from the January 24, 2017, (reference 02) unemployment insurance decision that allowed benefits based upon an untimely protest. The parties were properly notified about the hearing. A telephone hearing was held on February 24, 2017. Claimant did not respond to the hearing notice instruction and did not participate. Employer participated through company president Sean Kinna and company secretary Amanda Kinna. Department's Exhibit D-1 was received. Employer's Exhibit 1 was received.

ISSUES:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The notice of claim was mailed to the employer's address of record on December 22, 2016, and was received on January 6, 2017, because the business was closed and the employer was out of town from December 24, 2016, through January 2, 2017. The employer filed its protest on January 11, 2017. 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 did not have an opportunity to protest the notice of claim because the notice was not received in a timely fashion. Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The employer filed the protest within five days of receipt of the notice of claim. Therefore, the protest shall 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 January 24, 2017, (reference 02) 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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/rvs