

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SASHA C LUSE
Claimant

APPEAL NO. 08A-UI-07315-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ONEOTA COMMUNITY CO-OP
Employer

OC: 06/29/08 R: 04
Claimant: Respondent (2-R)

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

Oneota Community Co-op (employer) appealed a representative's August 5, 2008 decision (reference 02) that concluded Sasha C. Luse (claimant) was qualified to receive unemployment insurance benefits and the employer's account might be charged because the employer's protest was not timely filed. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 26, 2008. The claimant participated in the hearing. Laura Olson appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the employer's protest timely?

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits effective June 29, 2008. A notice of claim was mailed to the employer on July 7, 2008. The notice was mailed to the address of 415 W. Water St., Decorah, Iowa 52101. However, the employer had moved from that address to 312 W. Water St. in January 2008. The employer had notified the Agency of the change in address. The employer received the notice after it was forwarded by the United States Postal Service, but it was not received until after July 17, 2008. The notice contained a warning that a protest must be postmarked or received by the Agency by July 17, 2008. Ms. Olson, the bookkeeper, discovered the notice on July 27; it was not filed until it was postmarked on July 28, 2008, which is after the date noticed on the notice of claim.

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 which deals with the time limit to file a protest after the notice of claim has been mailed to the employer.

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 an 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). The record shows that the employer did not have a reasonable opportunity to file a timely protest.

The record establishes that the employer's representative did not receive the notice of claim until after the deadline for the response. The employer was not responsible for the delay in receiving the notice of claim, but the delay was due to department error or misinformation or delay or other action of the United States Postal Service. The employer did file its protest within ten days of actually receiving the notice. The administrative law judge, therefore, concludes that the protest was timely filed pursuant to Iowa Code § 96.6-2. This matter is remanded to the Claims Section to investigate the separation issue and determine whether the employer's account will or will not be subject to charges based on benefits the claimant may receive.

DECISION:

The August 5, 2008 (reference 02) decision is reversed. The protest in this case was timely. The matter is remanded to the Claims Section for investigation and determination of the separation and chargeability issues.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw