

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RACHEL M NELSON
Claimant

APPEAL NO: 13A-UI-13388-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AKRON CHILDRENS CENTER INC
Employer

OC: 08/25/13

Claimant: Respondent (2/R)

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

Akron Childrens Center, Inc. (employer) appealed a representative's November 26, 2013 decision (reference 02) that concluded Rachel M. Nelson (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 December 30, 2013. The claimant participated in the hearing. Deb Kroksh appeared on the employer's behalf and presented testimony from one other witness, Jamie Pearson. 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 August 25, 2013. A notice of claim was mailed to the employer's last-known address of record on August 27, 2013. The employer did not receive the notice. The notice contained a warning that a protest must be postmarked or received by the Agency by September 6, 2013. The protest was not filed November 18, 2013, when the employer responded to a quarterly Statement of Charges mailed to it on November 8 which assessed charges against the employer's account for benefits paid to the claimant in the third quarter 2013. The employer had not protested earlier because it had not received any notice that the claimant had filed a claim for unemployment insurance benefits.

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 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). 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 and was unaware of the filing of the claimant's claim until it received the statement of charges dated November 8, 2013. 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 timely after receiving the statement of charges. The administrative law judge, therefore, concludes that the protest should be treated as 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 November 26, 2013 (reference 02) decision is reversed. The protest in this case is treated as 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/pjs