

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

WOUNBE C BAOULIN AWATA
Claimant

R J PERSONNEL INC
Employer

APPEAL 17A-UI-08579-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/19/17
Claimant: Respondent (2R)**

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Employer filed an appeal from the August 17, 2017, (reference 01) decision that found the protest untimely and allowed benefits. After due notice was issued, a hearing was held by telephone conference call on September 7, 2017. Claimant participated. CTS Language Link Interpreter ID number 10686 interpreted on claimant's behalf. The employer participated by account manager Mike Thomas. Official notice was taken of the administrative record with no objection.

ISSUE:

Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer did not receive a notice of claim regarding claimant's claim for benefits. Mr. Thomas is the employee responsible for handling any notices of claims for the employer. According to the unemployment insurance decision dated August 17, 2017 (reference 01), the notice of claim contained a warning that the employer's protest response was due ten days from the initial notice date of March 22, 2017. The employer first became aware claimant had filed a claim for benefits when it received its statement of charges for the second quarter of 2017. The statement of charges was mailed out on August 9, 2017, for the quarter ending June 30, 2017. The statement of charges showed benefits charged to the employer in the amount of \$126.99 for claimant. The statement of charges was received by the employer a couple of days after August 9, 2017. After the employer received the statement of charges, it took a couple of days to review it to make sure the charges were correct. The employer discovered claimant's name on the statement of charges, but it had not received a notice of claim for her. The employer filed its protest on August 16, 2017. The issue of the reason for the separation has not yet been investigated or adjudicated at the claims level.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that employer's protest was timely.

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 section 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 it never received the notice of claim regarding claimant. 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 first became aware that claimant had filed a claim for benefits when it received its second quarter statement of charges for 2017. The employer then filed its protest seven days after the mailing date of the statement of charges. Therefore, the employer's protest shall be accepted as timely.

DECISION:

The August 17, 2017, (reference 01) unemployment insurance decision is reversed. The employer filed a timely protest.

REMAND: The separation issue is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs