

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TRACEY W TENNANT**  
Claimant

**APPEAL NO: 10A-UI-17043-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WESTERN EXPRESS INC**  
Employer

**OC: 10/24/10**  
**Claimant: Respondent (1)**

Iowa Code § 96.6(2) – Timeliness of Protest

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's December 7, 2010 determination (reference 02) that held the claimant qualified to receive benefits and the employer's account subject to charge because the employer had not filed a timely protest. The claimant participated in the hearing. Adrienne Hyden, a human resource employee, and Roy Alicen, a maintenance employee, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the employer did not file a timely protest or establish a legal excuse for filing a late protest.

**ISSUE:**

Did the employer file a timely protest or establish a legal excuse for filing a late protest?

**FINDINGS OF FACT:**

The claimant established a claim for benefits during the week of October 24, 2010. On November 2, 2010, the Department mailed a notice to the employer indicating the claimant had filed a claim for benefits and the maximum amount of money that could be charged against the employer's account. The notice of claim indicated the employer had until November 12, 2010, to respond to the notice.

In October 2010, Hyden was taking over another person's job. This person had handled paperwork for unemployment insurance claims. The employer was also in the process of having Thomas & Thorngren, a company who represents employers in unemployment insurance issues, handle the employer's unemployment insurance claims. The employer does not know when the employer received the notice of claim. Hyden does not remember signing the notice of claim form or why it was faxed on November 22 and not before.

**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 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. IDJS*, 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) which deals with the time limit to file a protest after the notice of claim has been mailed to the employer. The facts indicate the employer received the notice of claim, but the employer did not know what date the employer received the notice. The record indicates the employer did not fax a completed form to the Department until November 22, 2010, or after the ten-day deadline to timely file a protest. The employer did not establish a legal excuse for filing a late protest. 871 IAC 24.35(2). Since the employer did not file a timely protest or establish a legal excuse for filing late protest, the Appeals Section does not have jurisdiction to address the reasons for the claimant's employment separation.

(The parties presented testimony about the reasons for the employment separation during the hearing.)

**DECISION:**

The representative's December 7, 2010 determination (reference 02) is affirmed. The employer did not file a timely protest or establish a legal excuse for filing a late protest. Therefore, the Appeals Section does not have jurisdiction to address the reasons for the claimant's employment. This means the claimant remains qualified to receive benefits and the employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css