

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHEN J JACOBS

Claimant

APPEAL NO. 10A-UI-15954-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

RIVER CITY FORD TRUCK SALES INC

Employer

OC: 10/17/10

Claimant: Respondent (1)

Section 96.5-1 – Voluntary Quit
Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated November 9, 2010, reference 02, which held that the employer failed to file a timely protest. After due notice, a telephone conference hearing was scheduled for January 12, 2011. Claimant failed to respond to the hearing notice and did not participate.

The issue in this case is identical to the issue in 10A-UI-15951-VST. Testimony under oath was taken from the employer in that case. The employer was represented by Rex Ridenour, attorney at law. The employer informed the administrative law judge that the same testimony would be given in this case. The employer consented to using the testimony in 10A-UI-15951-VST in this case. The record consists, therefore, of the testimony of Sue Mackin, accountant. Official notice is taken of agency records.

The claimant did not call prior to the hearing, but he did call after the start time of the hearing. He did not have a control number. The administrative law judge explained to him that the issue did not require his testimony or evidence from him and that the decision in this case would be based on testimony from the employer and agency records.

ISSUE:

Whether the employer filed a timely protest.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant was employed by River City Ford Truck Sales Inc, which had a business address of 3921 West River Drive, Davenport, Iowa. The date of separation of employment was July 16, 2010. On September 15, 2010, some of the assets of River City Ford Truck Sales Inc. were sold. River City Ford Truck Sales Inc. now does business as Quick Change Auto Center. The mailing address is 302 West Kimberly Road, Davenport, Iowa.

After the sale of assets, Sue Mackin, the employer's accountant, went to United States Postal Service to file change of address forms so that the mail would be received at 302 West Kimberly Road, Davenport, Iowa. After she did this, one of the co-owners changed the business address online because he had previously received his personal mail at the business. As a result, all of the mail of River City Ford Truck Sales went to the former owner's address in Freeport, Illinois. The former owner would accumulate a bundle of mail and then bring it to Davenport. The employer did not contact Iowa Workforce Development directly to change the mailing address.

A notice of claim was sent to the employer on October 22, 2010. The due date for the protest was November 1, 2010. The mail was forwarded to the former owner at the address in Freeport, Illinois. The former owner gave the notice of claim to Sue Mackin on November 5, 2010. She then filed a protest by fax on November 5, 2010.

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 that deals with the time limit to file a protest after the notice of claim has been mailed to the employer. Compliance with the protest provisions is jurisdictional unless the facts of a case show that the notice was invalid. Beardslee, 276 N.W.2d 373, 377 (Iowa 1979); see also In re Appeal of Elliott, 319 N.W.2d 244, 247 (Iowa 1982). 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).

871 IAC 24.35(2) provides in pertinent part:

The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the department

that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service or its successor.

The evidence established that the failure to file a timely protest was not due to agency error or error of the United States Postal Service. The former owner directed all mail to himself at his address in Freeport, Illinois. This mail included time sensitive mail, such as this notice of claim. The former owner did not bring the notice of claim to Ms. Mackin's attention until November 5, 2010, which was after the due date. The failure to file a timely protest was due to the actions of employer. Accordingly, the employer failed to file a timely protest.

DECISION:

The decision of the representative dated November 9, 2010, reference 02, is affirmed. The employer failed to file a timely protest.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs