

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TAYLOR HOUSENGA
Claimant

RAJ LODGING INC
Employer

APPEAL 21A-UI-12297-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/20/20
Claimant: Respondent (2R)**

Iowa Code § 96.6(2) - Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 30, 2021, (reference 01) unemployment insurance decision that found the protest untimely and allowed benefits. After due notice was issued, a hearing was held on July 26, 2021. The claimant did not participate. The employer participated through representative Jackie Rekruciak. Exhibit 1 and Department's Exhibit D-1 was received into the record.

ISSUE:

Was the employer's protest timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A notice of claim was mailed to employer's address of record on December 23, 2020, and was received by employer within ten days. The notice of claim contains a warning that the employer protest response is due ten days from the initial notice date and gave a response deadline of January 4, 2021. The employer filed its protest on January 4, 2021. (Exhibit 1).

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the 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 received the notice of claim within the protest period and provided proof they submitted their protest by fax submission on January 4, 2021 at 9:30 a.m. (Exhibit 1). When the Department allows employers to submit a protest by fax, the Department has the responsibility to make sure its equipment works properly and, in this case, did not because they did not receive the fax until January 5, 2021. Based on the evidence, the Appeals Section has legal jurisdiction to determine whether the employer's account can be relieved from charges.

DECISION:

The April 30, 2021, (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.



Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

July 30, 2021
Decision Dated and Mailed

cs/mh