

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MITZI LUNA**  
Claimant

**ARONA CORPORATION**  
Employer

**APPEAL 17A-UI-02681-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/12/17**  
**Claimant: Respondent (2-R)**

Iowa Code § 96.6(2) - Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the March 7, 2017 (reference 02) unemployment insurance decision that found the protest untimely and allowed benefits. After due notice was issued, a hearing was held on April 3, 2017. The claimant, Mitzi Luna, participated. The employer, Arona Corporation, participated by Josh Opperman, Human Resources Business Partner. Department's Exhibit D-1 was received.

**ISSUES:**

Was the employer's protest timely?  
Is the employer liable for benefit charges?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant's notice of claim was mailed to employer's address of record on February 20, 2017, 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 March 2, 2017. The employer filed its protest on March 3, 2017. Opperman testified that Rose Foxwell was responsible for filing the statement of protest. On March 2, Foxwell attempted to file the protest via fax a number of times. She believed the fax went through. When Foxwell arrived at work the following day, she learned that her fax did not go through. Therefore, on March 3, Foxwell resent the statement via fax.

**REASONING AND CONCLUSIONS OF LAW:**

The sole issue on appeal is whether employer's protest is timely. The administrative law judge concludes it is.

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 but has established a legal excuse for filing its protest after the deadline. Iowa Admin. Code r. 871-24.35(2). The employer filed a protest in a timely manner on March 2, 2017, but the agency did not receive the fax transmission. Immediately upon receipt of information to that effect, the protest was re-filed and received on March 3, 2017. Therefore, the protest shall be accepted as timely.

**DECISION:**

The March 7, 2017 (reference 02) 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.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed