

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

WILLIAM C ABBOTT Claimant AFG INDUSTRIES INC Employer	<div>68-0157 (9-06) - 3091078 - EI</div> <div>APPEAL NO: 06A-UCX-00021-DT</div> <div>ADMINISTRATIVE LAW JUDGE DECISION</div> <div>OC: 09/10/06 R: 02 Claimant: Respondent (2/R)</div>
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Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

AFG Industries, Inc. (employer) appealed a representative's November 30, 2006 decision (reference 02) that concluded William C. Abbott (claimant) was qualified to receive unemployment insurance benefits and the employer's account might be charged because the employer's protest was not timely filed. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 20, 2006. The claimant participated in the hearing. Dwight Kalousek appeared on the employer's behalf. One other witness, Nadine Wreghitt, was available on behalf of the employer but did not testify. During the hearing, Exhibit A-1 was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the employer's protest timely?

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits effective September 10, 2006. He filed an additional claim effective November 5, 2006. A notice of claim was mailed to the employer's last-known address of record in Tennessee on November 14, 2006. It is unknown when the notice arrived at the Tennessee location, the employer's corporate headquarters. On November 28 the Tennessee office faxed the notice to the employer's Iowa business site in Hampton, Iowa. The notice contained a warning that a protest must be postmarked or received by the Agency by November 27, 2006. The protest was not filed until it was completed by Mr. Kalousek, plant manager of the Hampton facility, and faxed to the Claims Section on November 28.

In approximately November 2004 the employer had a similar situation arise, and at that time had made a written request to the Agency to have its official mailing address for all unemployment insurance matters changed to the address of the Hampton facility to avoid delays in situations such as that which occurred in this case. However, the employer received a written response that the change could not be made; it received no further instruction as to how it could properly make the address change if its initial request was not adequate.

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 administrative law judge considers the reasoning and holding of the Beardslee court 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.

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). The record shows that the employer did not have a reasonable opportunity to file a timely protest.

The record establishes that the employer's representative did not receive the notice of claim at the address at which it had requested be made its official address of record until November 28, 2006. The employer was not responsible for the delay in receiving the notice of claim, but the delay was due to error, misinformation, or delay or other action of the Agency. The employer did file its protest within ten days of actually receiving the notice. The administrative law judge, therefore, concludes that the protest was timely filed pursuant to Iowa Code § 96.6-2. This matter is remanded to the Claims Section to investigate the separation issue and determine whether the employer's account will or will not be subject to charges based on benefits the claimant may receive.

DECISION:

The November 30, 2006 (reference 02) decision is reversed. The protest in this case was timely. The matter is remanded to the Claims Section for investigation and determination of the separation and chargeability issues. The issue of the employer's change of address is further remanded to the Tax Bureau for communication with the employer as to what additional steps need be taken to accomplish the desired change of official mailing address.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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