

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELIZABETH M BROWN
Claimant

APPEAL NO. 13A-UI-02208-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

PIZZA HUT
Employer

OC: 10/28/12
Claimant: Respondent (1)

Section 96.6-2 – Timely Protest

STATEMENT OF THE CASE:

The employer filed an appeal from the representative's decision dated February 18, 2013, reference 02, which held that the employer failed to file a timely protest. After due notice was issued, a hearing was held by telephone conference call on March 21, 2013. The claimant did not respond to the hearing notice and did not participate. The employer participated by Joe Comes, owner. The record consists of the testimony of Joe Comes. Official notice is taken of agency records.

ISSUE:

Whether the employer filed a timely protest.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge makes the following findings of fact:

The employer is a holding company that owns 14 Pizza Hut restaurants. The claimant established an original claim for unemployment insurance benefits on October 28, 2012. The employer was mailed a notice of claim on November 1, 2012. The employer responded to the notice of claim by saying that there were no records of this employee having worked for the employer. Additional investigation was done and eventually the claimant's name and social security number were properly identified. A second notice of claim was mailed on January 3, 2013. The due date for the protest was January 13, 2013. The employer believes that it protested by fax on January 14, 2013. The agency records show that the protest was filed on February 14, 2013.

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 section 96.6-2. Another portion of Iowa Code 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 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 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. 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.

In this case, the evidence established that the protest in this case was not filed in a timely manner. The claim for benefits was established on October 28, 2012, and any protest had to be postmarked by January 13, 2013. The protest was not received until February 14, 2013. Even if the employer's date of January 14, 2013 is used, the protest is still late. Iowa law provides that a protest can be timely if the delay is due to department error or misinformation or to delay or other action of the United States Postal Service. The delay in this case was due to error on the part of the employer. Accordingly, the protest is not timely and the administrative law judge does not have jurisdiction to rule on the merits of the separation of employment.

DECISION:

The unemployment insurance decision dated February 18, 2013, reference 02, is affirmed. The employer failed to file a timely protest.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs