

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JERRY M SANFORD
Claimant

APPEAL NO: 12A-UI-04576-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABX CARGO SERVICES INC
Employer

OC: 01/08/12
Claimant: Respondent (4)

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer appealed a department decision dated April 13, 2012, reference 02, that held it failed to file a timely protest regarding claimant's employment separation on January 12, 2012, and which allowed benefits. A telephone hearing was held on May 14, 2012. The claimant participated. Amy Lewis, claims specialist, and Jeff Weyand, representative, participated for the employer. Employer Exhibit 1 was received as evidence.

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 the evidence in the record, finds: The claimant filed an unemployment claim effective January 8, 2012. The department mailed a notice of claim to the employer on March 29, 2012. The employer forwarded the notice by e-mail during the late afternoon of April 9. An employer representative faxed a protest to the department the next day.

The department tax bureau shows the employer established an address of record on April 14, 2011 that is in care of Employer's Unity. The claimant last earned wages with the employer, ABX Cargo Services Inc., under tax account #514564 in the second quarter of 2011.

The claimant earnings record show he earned taxable wages with the employer Airborne Global Solutions (er #514544) in the amount of \$11,307 for the 3rd quarter and \$11,309 for the fourth quarter of 2011.

REASONING AND CONCLUSIONS OF LAW:

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.

Another portion of this same Code section dealing with timeliness of an appeal from a representative's decision states that such 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 held that this statute prescribing the time for notice of appeal clearly limits the time to do so, and that 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 that court in that decision to be controlling on this portion of that same Iowa Code section which deals with a time limit in which to file a protest after notification of the filing of the claim has been mailed. The employer has not shown any good cause for not complying with the jurisdictional time limit. Therefore, the administrative law judge is without jurisdiction to entertain any appeal regarding the separation from employment.

The administrative law judge concludes that the employer representative had a good cause for the one-day delay to affect a timely protest. The employer representative had established with the department tax bureau on April 14, 2011 to have correspondence sent directly to it on behalf of the department. The protest delay is based on the employer having to forward the notice of claim to its representative.

The department earnings record shows claimant worked under a different tax account number for a similarly named employer after the second quarter of 2011. The only issue in this matter is the employer representative timely protested for ABX Cargo Services (er#514564) not Airborne Global Solutions. If the employer intended to protest claimant's employment separation from the latter employer, then it needs to raise this as a separate issue (apart from this matter) with the department.

DECISION:

The department decision dated April 13, 2012, reference 02, is reversed. The employer representative filed a timely protest for ABX Cargo Services.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw