

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROCKY R VANCE
Claimant

APPEAL NO. 16A-UI-10964-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KIMBERLY CHRYSLER PLYMOUTH INC
Employer

OC: 03/20/16
Claimant: Respondent (2)

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 28, 2016, reference 04, decision that allowed benefits and found the protest untimely. After due notice was issued, a hearing was held by telephone conference call on October 25, 2016. The claimant did not participate. The employer was represented by Jackie Nolan, Hearings Representative, and participated through Tracey Wood, Claims Representative. Department's Exhibits D-1 and D-2 were received into evidence.

ISSUE:

The issue is whether the employer filed a timely protest.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant established a claim for unemployment insurance benefits effective March 20, 2016. The employer has opted to participate in the multistate SIDES program, and so a notification of claim was transmitted to the employer on March 31, 2016. The employer did not receive the notice. The notice contained a warning that a protest must be received by the Agency by April 11, 2016. The protest was not filed until September 30, 2016, which is after the due date.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer's protest is timely. The administrative law judge determines it is.

Iowa Code § 96.6(2) provides:

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 representative shall promptly

examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The employer did not have an opportunity to file a protest because the notice of claim was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The employer timely protested the notice of claim. Therefore, the protest shall be accepted as timely.

DECISION:

The September 28, 2016, reference 04, decision is reversed. The protest shall be accepted as timely. The claimant has requalified for benefits since the separation. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer shall not be charged.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs