

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KENNETH D WISEMAN
Claimant

NUSSBAUM TRANSPORTATION SERVICES
Employer

APPEAL 16A-UI-09989-LJ-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 05/08/16
Claimant: Respondent (2-R)

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed an appeal from the September 7, 2016, (reference 01) unemployment insurance decision that allowed benefits and found the employer's protest untimely. The parties were properly notified of the hearing. A telephone hearing was held on September 28, 2016. The claimant, Kenneth D. Wiseman, participated. The employer, Nussbaum Transportation Services, participated through Josh Carr, human resources manager. Employer's Exhibit 1 was received and admitted into the record without objection. This exhibit was provided to the administrative law judge via email during the hearing, and it was mailed to claimant immediately after the hearing. The administrative law judge read the contents of this exhibit to claimant, and he had no objection to the information entering the record.

ISSUE:

Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant separated from employment with the employer on April 29, 2016. Claimant initially filed for unemployment insurance benefits during the week of May 8, 2016. The claimant's notice of claim was never mailed to the employer's address of record. The employer first learned about claimant's claim for unemployment insurance benefits when it received its Statement of Charges for the quarter ending June 30, 2016. This Statement of Charges was mailed to the employer at its address of record on August 9, 2016. (Exhibit 1) Carr testified the employer changed addresses approximately three years ago. It updated its address with Iowa Workforce Development at that time, and it has since received unemployment-related mailings at its current address. When Carr received the Statement of Charges, he contacted Iowa Workforce Development and was informed that the notice of claim was mailed to an incorrect address. The employer filed its protest on August 18, 2016. The claimant's April 29, 2016, separation from employment has not yet been the subject of a Benefits Bureau fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

The issue to be considered in this appeal is whether the employer filed a timely protest. The administrative law judge determines the employer did file a timely protest.

Iowa Code § 96.6(2) provides, in pertinent part:

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 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. 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 § 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 did not have an opportunity to protest the notice of claim because the notice was not received in a timely fashion. Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The employer filed the protest within ten days of receipt of the Statement of Charges that put it on notice of claimant's claim for unemployment insurance benefits. Therefore, the protest shall be accepted as timely.

DECISION:

The September 7, 2016, (reference 01) unemployment insurance decision is reversed. The employer has 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.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

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