

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**PARIS L BARNETT**  
Claimant

**LEIGHMAN CORP**  
Employer

**APPEAL 17A-UI-04800-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/02/17**  
**Claimant: Respondent (2-R)**

Iowa Code § 96.6(2) - Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the April 28, 2017, (reference 07) unemployment insurance decision that found the protest untimely and allowed benefits. After due notice was issued, a hearing was held on May 23, 2017. The claimant, Paris L. Barnett, did not answer when the administrative law judge called her at the hearing time, and she did not participate in the hearing. The employer, Leighman Corporation, participated by Joe Sanchez, General Manager. The administrative law judge took official notice of the Notice of Claim and the Employer's Statement of Protest.

**ISSUES:**

Was the employer's protest timely?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant's notice of claim was mailed to employer's address of record on April 10, 2017, and was not received by employer within ten days. The notice of claim contains a warning that the employer protest response is due ten days from the initial notice date and gave a response deadline of April 21, 2017. Sanchez testified that the employer received the Notice of Claim on April 21, 2017, one day after the deadline to respond had expired. The employer filed its protest on April 21, 2017, immediately after receiving the Notice of Claim. This document was faxed in at 5:09 p.m., and was stamped as received by the agency on April 24, the following business day.

**REASONING AND CONCLUSIONS OF LAW:**

The sole issue is whether employer's protest is timely. The administrative law judge concludes it is.

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.

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 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 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 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.

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 the same day that it received the Notice of Claim. Therefore, the protest shall be accepted as timely.

**DECISION:**

The April 28, 2017, (reference 07) unemployment insurance decision is reversed. The employer 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.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

lj/rvs