

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEFF R FISHER**  
Claimant

**APPEAL NO: 13A-UI-12212-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BRADLEY TOOLS & FASTNERS INC**  
Employer

**OC: 05/05/13**  
**Claimant: Respondent (4/R)**

Iowa Code § 96.6(2) – Timely Protest

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's October 25, 2013 determination (reference 03) that held the claimant eligible to receive benefits and the employer's account subject to charge because the employer had not filed a timely protest. The claimant participated at the hearing. Carolyn Bradley, an owner and vice president, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the employer established a legal excuse for filing a late protest and this matter will be remanded to the Claims Section to determine the reasons for the claimant's employment separation.

**ISSUE:**

Did the employer file a timely protest or establish a legal excuse for filing a late protest?

**FINDINGS OF FACT:**

At the beginning of 2013, the employer discontinued using a post office box to receive mail. The employer called and talked to a Department representative in February 2013 and provided the employer's updated mailing address. When the employer filed its quarterly reports, the employer's mailing address was correct.

The claimant established a claim for benefits during the week of May 5, 2013. A notice of claim was mailed to the employer on May 7, 2013, but the notice of claim was not mailed to the employer's correct address of record. Instead, the notice of claim was mailed to the employer's discontinued post office box number. The employer did not receive the notice of claim and did not know the claimant had filed a claim for benefits.

In October 2013, the employer received a form from the Department's Investigation and Recovery Section that asked when the claimant had worked and the wages he had earned. After receiving this form, which had been mailed to the employer's correct address of record, the employer called the Department and learned the claimant had been filing weekly claims and that its account was subject to charge. The employer protested charges to its account on October 23, 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 § 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. IDJS*, 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) which deals with the time limit to file a protest after the notice of claim has been mailed to the employer. The facts indicate the employer did not receive the May 7, 2013 notice of claim because the Department did not mail it to the employer's correct address of record. The employer established a legal excuse for filing its protest on October 23, 2013. 871 IAC 24.35(2).

Since the employer established a legal excuse for filing a late protest, this matter will be remanded to the Claim's Section to conduct a fact-finding interview and determine the reasons for the claimant's employment separation.

**DECISION:**

The representative's October 25, 2013 determination (reference 03) is modified in the employer's favor. The employer did not file a timely protest, but established a legal excuse for filing a late protest. As a result, this matter is **Remanded** to the Claims Sections to conduct a fact-finding interview to determine if the reasons for the claimant's employment are for disqualifying or nondisqualifying reasons.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs