

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AHMAD J SLOAN
Claimant

APPEAL NO: 11A-UI-15161-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**ATHLETICS FOR EDUCATION
AND SUCCESS INC**
Employer

OC: 10/02/11
Claimant: Respondent (1)

Iowa Code § 96.6(2) – Timeliness of Protest

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's November 17, 2011 determination (reference 04) 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 responded to the hearing notice, but he was not available for the hearing when he was called. Charles Clayton, the executive director, and Joy Schauer appeared on the employer's behalf. Based on the evidence, the employer's arguments, and the law, the administrative law judge concludes the employer did not file a timely protest so its account cannot be relieved from charge.

ISSUE:

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

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of October 2, 2011. On November 1, 2011, the Department mailed a notice to the employer indicating the claimant had filed a claim for benefits and the maximum amount of money that could be charged against the employer's account was \$66.88. The notice of claim indicated the employer had until November 14, 2011, to protest charges to its account.

The employer received the notice of claim on November 10, 2011. The employer had moved to a new location and it took some time for the employer to locate the claimant's personnel file. The employer did not notice the November 14 deadline date until November 15, when the employer faxed its protest to the Department.

The claimant worked for the employer between February and March 20, 2011. He worked as a part time youth counselor. The claimant stopped reporting to work after March 20, 2011. Later, the employer learned the claimant stopped reporting to work because the job interfered with his schooling.

Between March 20 and October 2, 2011, the claimant worked for another employer and earned more than ten times his weekly benefit amount.

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 received the notice of claim before the ten-day deadline. While the administrative law judge understands the employer had recently moved to a new location, the employer did not establish a legal excuse for filing its protest on November 15, 2011, or one day late. 871 IAC 24.35(2). Under the facts of this case, the employer did not file a timely protest. Therefore, the Appeals Section does not have legal jurisdiction to relieve the employer's account from charge.

After the claimant worked for the employer but prior to establishing his claim for benefits, he earned ten times his weekly benefit amount from subsequent employment. As a result, there is no legal consequence to the claimant as a result of this decision.

DECISION:

The representative's November 17, 2011 determination (reference 04) is affirmed. The employer did not file a timely protest or establish a legal excuse for filing a late protest. Therefore, the employer's account cannot be relieved from charge. The claimant is qualified to receive benefits because even if his employment separation were for disqualifying reasons, he earned requalifying wages before he established his claim for benefits.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw