

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALLIE J CANOY
Claimant

APPEAL NO: 13A-UI-02532-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY OF DECORAH
Employer

OC: 08/26/12
Claimant: Respondent (1)

Iowa Code § 96.6(2) – Timeliness of Protest

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's March 1, 2013 determination (reference 01) 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 in the hearing. Wanda Hemesath, the city clerk, and Sue Macal-Hageman appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes that because the employer did not file a timely protest or establish a legal excuse for filing a late protest, the employer's account is subject to 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 August 26, 2012. A notice of claim was mailed to the employer on September 4, 2012. The employer received the notice of claim within a few days. The notice of claim informed the employer the deadline to file a protest was September 14, 2012. The city clerk assumed the claimant had worked as long as the employer needed her and did not protest her claim.

In January 2013 the city clerk learned the claimant had gone back to school full time. She then talked to the Parks and Recreation supervisor and learned the claimant worked until she went back to school but, she could have worked until October. The employer then protested the claimant's claim because the employer did not believe she should be eligible to receive benefits when she left to go back to college. The employer filed the protest on January 18, 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 received the notice of claim and had a reasonable opportunity to file a timely protest. The city clerk made an assumption instead of contacting the claimant's supervisor to find out why her employment ended in late August. It was not until January that the employer talked to the claimant's supervisor to find out why the claimant's employment ended. The employer did not establish a legal excuse for filing its protest late on January 18, 2013. 871 IAC 24.35(2). The Appeals Section does not have jurisdiction to relieve the employer's account from charge. Therefore, the employer's account remains subject to charge.

The employer asserted that other seasonal employees who have worked for the city, have been denied benefits. The employer admitted the employer had filed timely protests for the other employees. The purpose of a protesting a claim is to decide if a claimant is eligible to receive benefits. The record indicates that by the time the employer protested, the claimant had exhausted all her benefits. Filing a protest four months after receiving the notice of claim is not reasonable since the claim that could have been timely protested if the Parks and Recreation supervisor had been contacted in early September. As a result of the employer's incorrect assumption, the employer's account remains subject to charge.

DECISION:

The representative's March 1, 2013 determination (reference 01) is affirmed. The employer did not file a timely protest or establish a legal excuse for filing a late protest. The Appeals Section does not have jurisdiction to relieve the employer's account. Therefore, the employer's account remains subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css