

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ERIC L LISSY**  
Claimant

**APPEAL NO: 09A-UI-15354-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TURKLE'S TREE SERVICE INC**  
Employer

**OC: 08/23/09**  
**Claimant: Respondent (1)**

Section 96.6-2 – Timeliness of Protest

**STATEMENT OF THE CASE:**

Turkle's Tree Service, Inc. (employer) appealed a representative's October 6, 2009 decision (reference 02) that concluded Eric L. Lissy (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the employer had not filed a timely protest. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 13, 2009. The claimant participated in the hearing. The employer did not respond to the hearing notice or participate in the hearing. Based on the administrative record and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**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 23, 2009. On August 25, 2009, the Department mailed a notice of claim 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. The notice of claim indicated the employer had until September 4, 2009, to respond to the notice.

The employer received the notice of claim. but misplaced or misfiled it for three weeks. After finding the notice of claim, the employer protested the claimant's receipt of benefits on September 30, 2009.

**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 section 96.6-2. Another portion of Iowa Code 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. 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 section 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 record indicates the employer received the notice of claim before September 4, 2009, or before the initial ten-day deadline to protest. Misplacing or misfiling the notice of claim does not establish a legal excuse for filing a late protest on September 30, 2009. 871 IAC 24.35(2). Under the facts of this case the employer filed a late protest and did not establish a legal excuse for filing a late protest. Therefore, the Appeals Section has no legal jurisdiction to relieve the employer's account from charge.

**DECISION:**

The representative's October 6, 2009 decision (reference 02) is affirmed. The employer did not file a timely protest or establish a legal excuse for filing a late protest. Therefore, the Appeals Section does not have any legal authority to review the reasons for the claimant's employment separation. This means the claimant remains qualified to receive benefits as of August 23, 2009, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs