

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANDREW E FOLTZ**  
Claimant

**APPEAL NO. 09A-UI-06688-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**QUALIFIED PLAN CONSULTANTS LLC**  
Employer

**Original Claim: 08/03/08**  
**Claimant: Respondent (2/R)**

Section 96.6-2 – Timeliness of Protest

**STATEMENT OF THE CASE:**

Qualified Plan Consultants, L.L.C. (employer) appealed a representative's April 21, 2009 decision (reference 04) that concluded Andrew E. Foltz (claimant) was qualified to receive unemployment insurance benefits and the employer's account might be charged because the employer's protest was not timely filed. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 27, 2009. This appeal was consolidated for hearing with a related appeal, 09A-UI-06687-DT, on a duplicate decision also issued on April 21, 2009 (reference 03). The claimant participated in the hearing. Tom Lastuvka appeared on the employer's behalf. During the hearing, Exhibit A-1 was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the employer's protest timely or is there a legal ground under which it should be treated as timely?

**FINDINGS OF FACT:**

The claimant established a claim for unemployment insurance benefits effective August 3, 2008. He reopened that claim by filing an additional claim effective March 15, 2009. A notice of claim was mailed to the employer's last known address of record on March 19, 2009. The employer received the notice, but not until April 10, 2009, a Friday. The notice contained a warning that a protest must be postmarked or received by the Agency by March 30, 2009. The protest was not filed until it was faxed on April 17, 2009, which is after the due date stated on the notice of claim, but was within ten days of actual receipt of the notice.

**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 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 administrative law judge considers the reasoning and holding of the Beardslee court controlling on the portion of Iowa Code § 96.6-2 that deals with the time limit to file a protest after the notice of claim has been mailed to the employer.

Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), protests are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983). The question in this case thus becomes whether the employer was deprived of a reasonable opportunity to assert a protest in a timely fashion. Hendren v. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the employer did not have a reasonable opportunity to file a timely protest.

The record establishes that the employer's representative did not receive the notice of claim until April 10, 2009. The employer was not responsible for the delay in receiving the notice of claim, but the delay was due to department error or misinformation or delay or other action of the United States Postal Service. The employer did file its protest within ten days of actually receiving the notice. The administrative law judge, therefore, concludes that the protest was timely filed pursuant to Iowa Code § 96.6-2. This matter is remanded to the Claims Section to investigate the separation issue and determine whether the employer's account will or will not be subject to charges based on benefits the claimant may receive.

**DECISION:**

The April 21, 2009 (reference 04) decision is reversed. The protest in this case should be treated as timely. The matter is remanded to the Claims Section for investigation and determination of the separation issues.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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