

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CYNTHIA A BROSHOUS
Claimant

APPEAL NO. 13A-UI-09183-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERIT RESOURCES INC
Employer

**OC: 07/14/13
Claimant: Respondent (4)**

Iowa Code Chapter 95 – Requalification
Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 5, 2013, (reference 02) decision that allowed benefits and found the protest untimely without having held a fact-finding interview pursuant to Iowa Admin. Code r. 871-24.9(2)b. After due notice was issued, a hearing was scheduled to be held by telephone conference call on September 13, 2013. Claimant and employer responded to the hearing notice instructions but no hearing was held as there was sufficient evidence in the administrative record, appeal letter and accompanying documents to resolve the matter without testimony.

ISSUES:

Is the employer's protest timely?
Has the claimant requalified for benefits since the separation from this employer?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The claimant's notice of claim was mailed to the employer's address of record on July 19, 2013, and was received within the protest period. The employer filed its protest on July 31, 2013, after having difficulty with facsimile rejections from IWD on the due date. The claimant has requalified for benefits since the separation from the employer.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether employer's protest is timely. The administrative law judge concludes it is.

Iowa Code section 96.6-2 provides in pertinent part:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date

of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant.

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. Iowa Dep't of Job Serv.*, 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) that deals with the time limit to file a protest after the notice of claim has been mailed to the employer. The employer received the notice of claim within the protest period but has established a legal excuse for filing its protest after the deadline. Iowa Admin. Code r. 871-24.35(2). When the Department allows employers to submit a protest by fax, the Department has the responsibility to make sure its equipment works properly and, in this case, did not. Based on the evidence, the Appeals Section has legal jurisdiction to determine whether the employer's account can be relieved from charges. The administrative law judge further concludes that the claimant has requalified for benefits since the separation from this employer. Accordingly, benefits are allowed and the account of the employer shall not be charged. If the employer experiences similar difficulty in the future, the protest may always be submitted by mail as long as it is postmarked by the due date.

The administrative law judge further concludes that the claimant has requalified for benefits since the separation from this employer. Accordingly, benefits are allowed and the account of the employer shall not be charged.

DECISION:

The August 5, 2013, (reference 02) decision is modified in favor of the appellant. The employer has filed a timely protest and the claimant has requalified for benefits since the separation. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer shall not be charged.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs