

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AARON J YOUNG**  
Claimant

**APPEAL NO: 08A-UI-01294-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CMK ENTERPRISES INC**  
Employer

**OC: 03/25/07 R: 02**  
**Claimant: Respondent (1)**

Section 96.6-2 – Timeliness of Protest  
Section 96.7-2-a(2) – Charges Against Employer’s Account

**STATEMENT OF THE CASE:**

CMK Enterprises, Inc. (employer) appealed a representative's February 6, 2008 decision (reference 03) that concluded Aaron Young (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 February 20, 2008. The claimant participated in the hearing. Christy Hayes 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 affirming the representative's decision and allowing the claimant benefits.

**ISSUE:**

Should the employer's protest be treated as timely?

**FINDINGS OF FACT:**

The claimant established a claim for unemployment insurance benefits effective March 25, 2007, prior to when his employment began with the employer. After a week of partial unemployment insurance benefits, the claimant filed an additional claim effective January 13, 2008 and filed a weekly claim for the week ending January 19, 2008. As a result, a notice of claim was mailed to the employer's last-known address of record on January 22, 2008. The notice arrived in the employer's office within a few days thereafter. The notice contained a warning that a protest must be postmarked or received by the Agency by February 1, 2008. The protest was not filed until it was faxed on February 4, 2008, which is after the date noticed on the notice of claim.

The reason for the delay was that matters such as unemployment insurance correspondence was normally handled by Ms. Hayes, the employer's treasurer and office manager, and she was out of the office from January 23 through January 31. During her absence there was someone handling mail who was directed to put anything personnel related onto her desk.

Ms. Hayes returned to the office on February 1. However, she did not get the protest handled until February 4, 2008.

### **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 which deals with the time limit to file a protest after the notice of claim has been mailed to the employer. Compliance with the protest provisions is jurisdictional unless the facts of a case show that the notice was invalid. Beardslee, 276 N.W.2d 373, 377 (Iowa 1979); see also In re Appeal of Elliott, 319 N.W.2d 244, 247 (Iowa 1982). 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 have a reasonable opportunity to file a timely protest.

871 IAC 24.35(2) provides in pertinent part:

The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the department that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service or its successor.

The employer's decision to reserve all handling of unemployment insurance matters to Ms. Hayes, the decision not to allocate coverage for such time sensitive issues during Ms. Hayes' absence, and her failure to immediately detect and act upon the protest when she returned on the due date were business decisions for which the employer must bear the consequences. The employer has not shown that the delay for not complying with the jurisdictional time limit was due to department error or misinformation or delay or other action of the United States Postal Service. Since the employer filed the protest late without any legal excuse, the employer did not file a timely protest. Since the administrative law judge concludes that the protest was not timely filed pursuant to Iowa Code § 96.6-2, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the protest and the reasons for the claimant's separation from employment, regardless of the merits of the employer's protest. See, Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979); Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979) and Pepsi-Cola Bottling Company v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

Regardless as to whether a protest is timely or not, an employer's account is only chargeable during the current claim year if the employer is a base period employer. Iowa Code § 96.7. The base period is "the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim." Iowa Code § 96.19-3. The claimant's base period began October 1, 2005 and ended September 30, 2006. The employer did not employ the claimant during this time, and therefore the employer is not currently a base period employer and its account is not currently chargeable for benefits that might be paid to the claimant during the remainder of his current benefit year.

**DECISION:**

The February 6, 2008 (reference 03) decision is affirmed. The protest in this case was not timely, and the decision of the representative remains in effect. Benefits are allowed, provided the claimant is otherwise eligible. The employer's account is not subject to charge in the current benefit year.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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