

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHEN V WEBER
Claimant

APPEAL NO. 07A-UI-01164-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HERB GREEN FORD INC
Employer

**OC: 01/06/08 R: 04
Claimant: Respondent (1)**

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

Herb Green Ford, Inc. (employer) appealed a representative's January 31, 2008 decision (reference 02) that concluded Stephen V. Weber (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the employer did not file a timely protest. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 18, 2008. The claimant participated in the hearing. Sara Melloy, the office manager, appeared on the employer's behalf. 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:

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 January 6, 2008. On January 10, 2008, the Department mailed a notice 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 January 22, 2008, to respond to the notice.

The employer received the notice of claim by January 17, 2002 because the employer attempted to fax the completed form that day. The fax did not successfully transmit on January 17 or 18. On January 22, the employer again tried to fax the completed protest to the Department. Again, the fax did not successfully transmit.

On January 23, the employer contacted the local Dubuque office who informed the employer the fax number they had been using was not working. The Dubuque office gave the employer alternative numbers to fax the protest. The employer faxed its protest on January 24, 2008. The Department received it on January 25, 2008.

The claimant worked for the employer until March 16, 2007. The claimant resigned to return to work for a former employer that he worked for during the summer. Between March 16, 2007 and January 6, 2008, the claimant worked for other employers and earned more than ten times his weekly benefit amount.

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 prior January 22, 2008, the initial ten-day deadline. Even though the employer's procedure is to fax the completed protest to the Department, the employer knew the fax was not successfully transmitting on January 17, 18 or 22. When the fax did not successfully transmit, nothing prevented the employer from mailing the completed protest on January 22, which would have met the deadline requirement. The employer did not establish a legal excuse for filing its protest on January 24, 2008. 871 IAC 24.35(2). Under the facts of this case the employer did not file a timely protest or 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. See 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).

After the claimant worked for the employer but prior to establishing his claim for benefits, he earned ten times his weekly benefit amount from subsequent employment. As a result, there is no legal consequence to the claimant as a result of this decision.

DECISION:

The representative's January 31, 2008 decision (reference 02) is affirmed. The employer did not file a timely protest or establish a legal excuse for filing a late protest. Since the claimant requalified before he established his claim for unemployment insurance benefits, he remains

qualified to receive unemployment insurance benefits. The employer's account cannot be relieved from charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css