

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TANNER J WHITE**  
Claimant

**APPEAL NO. 08A-UI-00101-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**G & G FRANCHISING CORP**  
**SUBWAY**  
Employer

**OC: 12/02/07 R: 02**  
**Claimant: Respondent (4/R)**

Section 96.6-2 – Timeliness of Protest

**STATEMENT OF THE CASE:**

G & G Franchising Corporation (employer) appealed a representative's December 24, 2007 decision (reference 04) that concluded Tanner J. White (claimant) was qualified to receive unemployment insurance 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 address of record, a telephone hearing was held on January 17, 2008. The claimant participated in the hearing. Julie Gorsche, the owner, appeared on the employer's behalf. During the hearing, Employer Exhibit One was offered and admitted as 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:**

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 unemployment insurance benefits during the week of December 2, 2007. On December 6, 2007, 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 December 17, 2007, to respond to the notice. (Employer Exhibit One).

The employer did not receive the Notice of Claim until December 20, 2007. The employer immediately completed the form and faxed it to the Department that same day.

The claimant worked for the employer from December 14, 2005, through November 28, 2006. Between November 29, 2006, and December 2, 2007, the claimant worked for other employers and earned more than ten times his weekly benefits or more than \$2,280.00.

**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 did not receive the Notice of Claim until December 20, 2007, or after the initial ten-day deadline. The employer established a legal excuse for filing its protest on December 20, 2007. 871 IAC 24.35(2). Therefore, the Department has 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).

Although information was presented during the hearing concerning the reasons for the claimant's employment separation, the employer was not prepared to address this issue. (An employer's account is relieved from charge when a claimant voluntarily quits employment without good attributable to the employer or the employer discharges the claimant for reasons amounting to work-connected misconduct. Iowa Code § 96.7-2-a.) The issue of whether the employer's account is subject to or exempt from charge is remanded to the Claims Section to determine.

**DECISION:**

The representative's December 24, 2007 decision (reference 04) is modified in the employer's favor. Although the employer did not file a timely protest, the employer established 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 issue of whether the employer's account is subject to or exempt from charge is remanded to the Claims Section to determine.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css