

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEAH D LINKE
Claimant

APPEAL NO. 10A-UI-02714-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

HARDEES OF SIOUX CENTER INC
Employer

OC: 01/10/10
Claimant: Respondent (2R)

Section 96.6-2 – Timeliness of Protest
Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated February 9, 2010, reference 03, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 25, 2010. Claimant participated. Employer participated by Pat Stein, Manager Hardees Store, Humboldt, Iowa. The record consists of the testimony of Pat Stein. Official notice is taken of agency records.

ISSUE:

Whether the employer filed a timely protest.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

A notice of claim for unemployment insurance benefits was sent to the employer on January 22, 2010. The notice was sent to an incorrect address and was not received by the employer until February 4, 2010. Upon receipt, a protest was faxed to the agency on February 4, 2010.

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 section 96.6-2. Another portion of Iowa Code section 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 section 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).

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 evidence in this case established that the employer did not have a reasonable opportunity to assert a protest in a timely fashion. The notice of claim was sent to the wrong address and was not delivered until February 4, 2010, which is after the date the protest was due. Upon receipt of the notice of claim, the employer filed a protest the same day. Since the employer did not have a reasonable opportunity to file a timely protest, the protest is deemed timely filed. This matter is remanded to the Claims Section for determination of the separation issue. This matter is also remanded to the Tax Section to change the employer's address to Hardees of Sioux Center Inc., c/o John Figlewicz, 2938 Crown View Drive, Rancho Palo Verde, California 90275. The employer account is 176827-000.

DECISION:

The decision of the representative dated February 9, 2010, reference 03, is reversed. The employer's protest is timely. This matter is remanded to the Claims Section for determination of the separation issue. This matter is also remanded to the Tax Section to change the address of the employer's account.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css