

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMANDA L GRAHAM
Claimant

APPEAL NO. 15A-UI-00071-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HILLCREST FAMILY SERVICES
Employer

OC: 11/30/14
Claimant: Respondent (2/R)

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

Employer filed a timely appeal from the December 26, 2014, reference 02, decision that allowed benefits and found the protest untimely. After due notice was issued, a hearing was held by telephone conference call on January 28, 2015. The claimant did not participate. The employer did participate through Julie Heiderscheit, Chief Operating Officer. Department's Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the employer filed a timely protest.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: Claimant's notice of claim was mailed to employer's address of record on December 3, 2014. The employer did not receive the notice of claim. The notice of claim contains a warning that any protest must be postmarked, faxed or returned not later than ten days from the initial mailing date. Employer did not file a protest until December 22, 2014, which is after the ten-day period had expired. The employer saw the notice on line on December 22, 2014.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the employer's protest is timely. The administrative law judge determines it is.

Iowa Code § 96.6-2 provides:

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 representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information

concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The employer did not have an opportunity to file a protest because the notice of claim was not received until December 22, 2014. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The employer timely protested the notice of claim. Therefore, the protest shall be accepted as timely.

The issue of the claimant's separation from employment is remanded for determination.

DECISION:

The December 26, 2014, reference 02, decision is reversed. Employer has filed a timely protest. The issue of the claimant's separation from employment is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs