

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

PETER N LIMAS
Claimant

BETHANY MANOR INC
Employer

APPEAL 16A-UI-08556-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/26/16
Claimant: Respondent (2R)

Iowa Code § 96.6(2) - Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 3, 2016, (reference 02) unemployment insurance decision that allowed benefits and found the protest untimely. After due notice was issued, a hearing was held on August 24, 2016. The claimant did not participate personally but submitted a written statement in lieu of attendance, which was admitted as Claimant exhibit A. The employer participated through Shannon Andersen, director of human resources. Employer exhibits 1 and 2 were received into evidence. The administrative law judge took official notice of the administrative records including the August 3, 2016 initial decision. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer participates in the State Information Data Exchange System (SIDES), a web-based system that allows state Unemployment Insurance (UI) agencies to communicate electronically with employers. The employer was notified of a new claim for this claimant on June 27, 2016, and Ms. Andersen became aware of a pending claim regarding the claimant when the initial notification was forwarded to her on June 28, 2016 from her co-worker. Using the required PIN number, Ms. Andersen accessed the SIDES system and completed the claim on July 7, 2016, within the ten day deadline of July 8, 2016. Ms. Andersen believed she had successfully transmitted the claim because she was able to view the completed claim in PDF format, save it, and print it off, and it was complete. She received no message or indication that the transmission had failed or was incomplete. However, when Ms. Andersen went back into the SIDES system on August 1, 2016, to retrieve and respond to another claim, unrelated to the claimant, she saw that the claim for this claimant was listed in a pending status. This was the first time she learned the claimant had not successfully been transmitted and she resubmitted it at that time.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer filed a timely protest.

Iowa Code § 96.6-2 provides in pertinent part:

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 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. Iowa Dep't of Job Serv.*, 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) that deals with the time limit to file a protest after the notice of claim has been mailed to the employer.

In this case, the employer received the notice of claim within the protest period but has established a legal excuse for filing its protest after the deadline. Iowa Admin. Code r. 871-24.35(2). The employer accessed and completed the claim via SIDES on July 7, 2016, and made a good faith attempt to submit the claim protest. The employer received no indication that the submission had failed, and further was able to save the response in PDF form, and when printed off, showed what appeared to be a completed claim. However, even though the employer filed a protest in a timely manner on July 7, 2016, the agency did not receive the fax transmission. Immediately upon receipt of information to that effect on August 1, 2016, the protest was re-filed. Therefore, the protest shall be accepted as timely. The separation issue is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision, or alternately, that the claimant has requalified.

DECISION:

The August 3, 2016, (reference 02) unemployment insurance decision is reversed. The employer has filed a timely protest.

REMAND: The separation issue is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision, or alternately, that the claimant has requalified.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/pjs