

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES E BIELSER
Claimant

APPEAL NO: 13A-UI-13122-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MISSISSIPPI FREIGHT HOUSE CORP DB
Employer

OC: 11/03/13
Claimant: Respondent (4)

Iowa Code § 96.6(2) – Timely Protest

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's November 22, 2013 determination (reference 02) that held the claimant eligible to receive benefits and the employer's account subject to charge because the employer had not filed a timely protest. The claimant did not respond to the hearing notice or participate at the December 17 hearing. Karla Standard, a manager, appeared on the employer's behalf. Based on the evidence, the employer's arguments, and the law, the administrative law judge concludes the employer established a legal excuse for filing a late appeal and the employer's account will not be charged.

ISSUE:

Did the employer file a timely protest or establish a legal excuse for filing a late protest?

FINDINGS OF FACT:

The last day the claimant worked for the employer was April 2, 2013. He resigned after he accepted another job. The claimant worked for the new employer, Double Eagle Golf, Inc. and earned from this employer more than \$2150 in wages between April 2 and November 3, 2013.

The claimant established a claim for benefits during the week of November 3, 2013. A notice of claim was mailed to the employer on November 7, 2013. The notice of claim indicated the maximum amount that could be charged to the employer's account. The notice also informed the employer a protest had to be filed on or before November 18, 2013.

The employer's address of record for unemployment insurance purposes is a post office box. Dennis Standard, the owner, is the only person who has key to the post office box. He typically goes to the post office once or twice a week. The employer had not received the notice of claim by November 9.

The owner did not go to the post office the week of November 10. Monday, November 11, the post office was closed. Tuesday, November 12, the owner underwent pre-op procedures for surgery he had on November 13. The owner went to the post office on November 19. He gave

the notice of claim to Karla Standard late on November 19. The employer faxed a protest on November 21, 2013.

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 November 19, 2013. The employer did not have a reasonable opportunity to file a timely protest. Under the facts of this the employer filed a protest almost immediately after receiving the notice of claim. The employer established a legal excuse for filing a late protest.

The next issue is whether the employer's account is subject to charge. 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. Also, under Iowa Code § 96.5(1)a the employer's account is relieved from charge when a claimant quits for other employment. The facts establish the claimant voluntarily quit this employment to work for another employer. The employer's account will not be charged.

The claimant remains eligible to receive benefits.

DECISION:

The representative's November 22, 2013 determination is modified in the employer's favor. The employer did not have a reasonable opportunity to file a timely protest. Since the employer filed a protest almost immediately after receiving the notice of claim, the Appeals Section has jurisdiction to relieve the employer's account from charge. Since the claimant voluntarily quit this employment for another job, the claimant is eligible to receive benefits based on this employment separation and this employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs