

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

VINCENT LAURA
Claimant

APPEAL 17A-UI-11145-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EYM KING OF IOWA LLC
Employer

OC: 10/01/17
Claimant: Respondent (4)

Iowa Code § 96.6(2) – Timeliness of Protest

Iowa Code Chapter 95 – Requalification

STATEMENT OF THE CASE:

The employer filed an appeal from the October 27, 2017, (reference 06) unemployment insurance decision that found the protest untimely and allowed benefits. After due notice was issued, a hearing was held by telephone conference call on November 17, 2017. The claimant participated personally. The employer participated by Jennifer Oxenreider. Patricia Mendoza also participated for the employer. Employer's Exhibit was received. The administrative law judge took official notice of the administrative record, including the Notice of Claim and protest. 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.

NOTE TO EMPLOYER: To become a SIDES E-Response participant, you may send an email to iwd-sidesinfo@iwd.iowa.gov. To learn more about SIDES, visit <http://info.uisides.org>.

ISSUES:

Is the employer's protest timely?

Has the claimant requalified for benefits since the separation from this employer?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The claimant's notice of claim was mailed to employer's address of record on October 3, 2017, and was received by employer within ten days.

The notice of claim contains a warning that the employer protest response is due ten days from the initial notice date and gave a response deadline of October 13, 2017. The employer responded via fax on October 12, 2017 that the claimant was not an employee (Employer Exhibit 1). The employer had recently switched payroll systems and could not locate the claimant.

However, the employer was sent a notice of return to the claim on October 20, 2017. At that time, the employer investigated and concluded the claimant's wages, which consisted of 1 day

of employment on December 12, 2016, had been retained in the employer's old payroll system. Accordingly, the employer updated its response and faxed it back to the agency on October 25, 2017.

Based upon administrative records, the claimant appears to have requalified for benefits since the separation from the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that employer has timely filed its protest response within the time period prescribed by the Iowa Employment Security Law.

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.

Another portion of this same Code section dealing with timeliness of an appeal from a representative's decision states that such 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 held that this statute prescribing the time for notice of appeal clearly limits the time to do so, and that 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 that court in that decision to be controlling on this portion of that same Iowa Code section which deals with a time limit in which to file a protest after notification of the filing of the claim has been mailed. The employer has not shown any good cause for not complying with the jurisdictional time limit. Therefore, the administrative law judge is without jurisdiction to entertain any appeal regarding the separation from employment.

Part of the same section of the unemployment insurance law deals with the timeliness of an appeal from a representative's decision and states an appeal must be filed within ten days after the date the decision was mailed to the parties. In addressing an issue of timeliness of an appeal, the Iowa Supreme Court concluded that when a statute creates a right to appeal and limits the time for appealing, compliance with the time limit is mandatory and jurisdictional. Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979).

This reasoning should also apply to the time limit for filing a protest after a notice of claim has been mailed to the employer. Based on the evidence presented, the employer did timely respond to the notice of claim on October 12, 2017, when it stated the claimant was not an employee. This was based upon the employer's good faith belief after reviewing its payroll system. However, the employer then learned that the claimant's wage history was contained in a prior payroll system, and upon request, responded to the Agency's request for more information.

The administrative law judge concludes that the employer filed its protest within the time period prescribed by the Iowa Employment Security Law because it did initially reply to the notice of

claim indicating the claimant had not been an employee. Later, when accurate information became available to the employer, it forwarded this information to the agency immediately after receipt. This is sufficient evidence of intent to protest any potential charges to their account.

The administrative law judge further concludes that the claimant has requalified for benefits since the separation from this employer. Accordingly, benefits are allowed and the account of this employer shall not be charged.

DECISION:

The October 27, 2017, (reference 06) unemployment insurance decision is modified in favor of the appellant. The employer has filed a timely protest and the claimant has requalified for benefits since the separation. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer shall not be charged.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn