

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**KRISTINE L CARSKADON**  
Claimant

**RLMV INC**  
Employer

**APPEAL 17A-UI-01086-JCT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/25/16**  
**Claimant: Respondent (2R)**

Iowa Code § 96.6(2) - Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the January 24, 2017, (reference 01) unemployment insurance decision that allowed benefits and found the protest untimely. After due notice was issued, a hearing was held on February 20, 2017. The claimant did not register a phone number with the Appeals Bureau and did not participate. The employer participated by way of Verne Evans, President. Department's Exhibit D-1 was received. The administrative law judge took official notice of the administrative records including the fact-finding documents. 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 operates a Subway franchise within a Walmart store. On December 28, 2016, the claimant's notice of claim was mailed to the employer's local address where the store is located, not the employer's address of record. Mr. Evans asserted prior to the notice of claim, that he had contacted IWD to change the mailing address. In addition, the claimant had been the manager for the store and responsible for checking the mail. As a result of the claim being mailed to the incorrect address and not being checked by the store manager as is customary, there was a delay in Mr. Evans receiving the notice of claim. The employer's correct address of record (which was used for the initial decision and notice of hearing) is: 1705 Bent Oak Drive, Springfield, Illinois 62704. Mr. Evans received the notice of claim January 10 or 11, and responded on January 11, 2017 via fax, after multiple failed fax attempts(Department Exhibit D-1). The claimant's November 29, 2016, separation from employment has not yet been the subject of a Benefits Bureau fact-finding interview.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the employer's protest was timely filed.

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 notice of claim was mailed to the local store address, instead of the employer's address of record, delaying receipt of the claim by the employer. This delay was further compounded by the person who would have checked the mail at the local store was the claimant and in her absence, delays in checking the mail were possible. Mr. Evans credibly testified he had attempted to avoid mail being sent to the local store in prior correspondence with the Agency. The employer did not have an opportunity to protest the notice of claim because the notice was not received in a timely fashion. Without timely 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). Once the employer did receive the notice of claim, after the ten day period to respond had expired, it made multiple attempts to fax its response before it was transmitted successfully on January 11, 2017 (Department Exhibit D-1). The employer filed the protest within one day of receipt of the notice of claim. Therefore, the protest shall be accepted as timely.

**DECISION:**

The January 24, 2017, (reference 01) 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.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

jlb/rvs