

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALFREDO REYES CATARINO
Claimant

APPEAL NO: 13A-UI-10549-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 04/21/13

Claimant: Respondent (2/R)

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

Wal-Mart Stores, Inc. (employer) appealed a representative's September 13, 2013 decision (reference 03) that concluded Alfredo Reyes Catarino (claimant) was qualified to receive unemployment insurance benefits and the employer's account might be charged because the employer's protest was not timely filed. Hearing notices were mailed to the parties' last-known addresses of record for a telephone hearing to be held on October 8, 2013. Prior to the hearing being held, the administrative law judge determined that no hearing was necessary and a decision was made on the record. Based on a review of the available information and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the employer's protest timely?

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits effective April 21, 2013. A notice of claim was mailed to the employer's representative's last-known address of record on April 23, 2013. The employer's representative received the notice. The notice contained a warning that a protest must be postmarked or received by the Agency by May 3, 2013. The protest was not treated filed until the employer's representative protested a quarterly statement of charges on August 23, 2013, which is after the date noticed on the notice of claim.

With its appeal of the representative's decision in this case the employer's representative provided a fax transmission report which shows that a protest letter dated May 3, 2013 was successfully transmitted to the appropriate fax number for the Agency. It is unknown what might have become of that transmission once it was received by the Agency.

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 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 administrative law judge considers the reasoning and holding of the *Beardslee* court 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.

Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), protests are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). The question in this case thus becomes whether the employer was deprived of a reasonable opportunity to assert a protest in a timely fashion. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the employer did not have a reasonable opportunity to file a timely protest.

The record establishes the employer's representative successfully faxed a completed protest into the custody of the Agency on May 5, 2013, within the time for filing a timely protest. The administrative law judge concludes that failure to have the protest treated as received within the time prescribed by the Iowa Employment Security Law was due to error, delay or other action of the Agency pursuant to 871 IAC 24.35(2). The administrative law judge, therefore, concludes that the protest was timely filed pursuant to Iowa Code § 96.6-2. This matter is remanded to the Claims Section to investigate the separation issue and may also determine whether the employer's account will or will not be subject to charges based on benefits the claimant may receive.

DECISION:

The September 13, 2013 (reference 03) decision is reversed. The protest in this case was timely. The matter is remanded to the Claims Section for investigation and determination of the separation issues and potentially the chargeability issues.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css