

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMBER K FUTRELL
Claimant

APPEAL NO: 13A-UI-09592-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

D & J ENTERPRISES
Employer

OC: 07/21/13
Claimant: Respondent (1)

Iowa Code § 96.6(2) – Timely Protest

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's August 14, 2013 determination (reference 03) 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 in the hearing. Renee Wedemeier, the manager, appeared on the employers' behalf. Based on the evidence, the employer's arguments, and the law, the administrative law judge concludes the employer's account is subject to charge.

ISSUE:

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

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of July 21, 2013. Her maximum weekly benefit amount is \$349. A notice of claim was mailed to the employer on July 30, 2013. The notice of claim indicated the deadline to protest was on or before August 9, 2013.

The manager went on vacation on July 19. She came back to work either on August 9 or 12. No one else handles the mail when the manager is on vacation or away from work. The manager does know when the employer received the notice of claim even though the business was open when the manager was on vacation.

The manager completed the notice of claim and faxed it to the Department on August 12, 2013. The employer protested charges against its account because the claimant had quit with no notice. The claimant later informed the employer she quit because she had another job.

After the claimant's employment ended during the second quarter of 2012, she worked for other employers. Before the claimant established her claim for benefits during the week of July 21, 2013, she had earned more than \$3490 in wages from subsequent employers.

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 do not indicate when the employer received the notice of claim. Even though the manager was on vacation from July 19 through August 9, the business was open, but no one opened the mail while the manager was gone. The employer did not establish a legal excuse for filing its protest on August 12 instead of August 9, 2013. 871 IAC 24.35(2). Under the facts of this case the employer did not file a timely protest or establish a legal excuse for filing a late protest. Therefore, the Appeals Section does not have jurisdiction to relieve the employer's account from charge.

Even if the employer had filed a timely protest, the claimant would still be eligible to receive benefits based on this employment separation because she earned requalifying wages or \$3490 from subsequent employers before July 21, 2013.

DECISION:

The representative's August 14, 2013 determination (reference 03) is affirmed. The employer did not file a timely protest or establish a legal excuse for filing a late protest. The Appeals Section does not have jurisdiction to relieve the employer's account from charge. Based on this employment separation, the claimant remains eligible to receive benefits because she earned requalifying wages after she worked for the employer but before she established her claim for benefits the week of July 21, 2013.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs