

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

CAROLYN J BELDEN
Claimant

APPEAL NO. 18A-UI-01767-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEERE & COMPANY
Employer

**OC: 12/17/17
Claimant: Respondent (1)**

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 1, 2018, reference 03, decision that allowed benefits and found the protest untimely. After due notice was issued, a hearing was held by telephone conference call on March 5, 2018. The claimant participated personally. The employer participated by Michael Marquart, Labor Relations Representative. Department's Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the employer filed a timely protest.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant's notice of claim was mailed to the employer's address of record on December 21, 2017, and received by the employer at its facility within ten days. The notice of claim contains a warning that any protest must be postmarked, faxed or returned not later than ten days from the initial mailing date. The facility was shut down from December 22 through January 3, 2018. On or about January 3, 2018, the protest was faxed from the employer's Moline, Iowa, facility to the employer's Waterloo, Iowa, facility. The protest was due on January 2, 2018. The employer signed the protest on January 23, 2018, but did not file a protest until January 25, 2018, which is after the ten-day period had expired.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this protest was filed. The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert a protest in a timely fashion. The record shows that the appellant may not have received the notice of claim within ten days of the mailing date because the plant was closed. It did receive the notice of claim on or about January 3, 2018. The employer took more than twenty days to file its protest after it received notice.

The administrative law judge concludes that the employer's failure to file a timely protest after receiving the notice of claim was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the protest was not timely filed.

DECISION:

The February 1, 2018, reference 03, decision is affirmed. The employer has failed to file a timely protest, and the decision of the representative shall stand and remain in full force and effect.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs