

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUZANNE M YOUNG
Claimant

APPEAL NO: 12A-UI-07296-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY OF GRANGER
Employer

**OC: 05/20/12
Claimant: Respondent (1)**

Iowa Code § 96.6(2) – Timeliness of Protest

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's June 18, 2012 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 participated at the hearing. Kristy Trzeciak, the city clerk, appeared on the employer's behalf. Based on the evidence, the parties' arguments, and the law, the administrative law judge concludes the employer did not file a timely protest and the employer's account is subject to charge.

ISSUES:

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

Is the employer's account subject to charge?

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits during the week of May 20, 2012. On May 24, 2012, the Department mailed a notice of claim to the employer indicating the claimant had filed a claim for benefits and the maximum amount of money that could be charged against the employer's account was \$133.62. The notice of claim indicated the employer had until June 4, 2012, to respond or protest charges to its account.

The employer's city clerk is responsible for taking care of unemployment insurance issues. She went out of town on May 25 and did not return to work until June 7, 2012. No other employee checks her mail when she is out of town. When Trzeciak returned to work, she completed the notice of claim form on June 8 and faxed it to the Department on June 11.

The claimant worked for the employer between January and May 3, 2011. The claimant worked on special projects for the library and resigned for health reasons. After May 3, 2011, the claimant worked for other employers before she established a claim for benefits the week of May 20, 2012. The claimant earned more than \$2,330.00 in wages from other employers between May 3, 2011, and May 20, 2012.

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 indicate the employer received the notice of claim shortly after it was mailed or before the June 4, 2012 initial ten-day deadline to protest. The city clerk who is responsible for completing the form was out of the office May 25 through June 7. The employer has not delegated someone to cover her work when she is absent. The employer did not establish a legal excuse for filing its protest late on June 11, 2012. 871 IAC 24.35(2). Under the facts of this case the employer filed a late protest and did not establish a legal excuse for filing a timely protest. Therefore, the Appeals Section does not have legal jurisdiction to relieve the employer's account from charge. The employer's account remains subject to a maximum charge of \$133.62 during the claimant's current benefit year.

After the claimant worked for the employer but prior to establishing her claim for benefits, she earned ten times her weekly benefit amount from subsequent employment. As a result, there is no legal consequence to the claimant as a result of this decision.

DECISION:

The representative's June 18, 2012 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. During the claimant's current benefit year, the employer's account can be charged a maximum of \$133.62. Since the claimant earned requalifying wages before she established her claim for unemployment insurance benefits, as of May 20, 2012, she remains qualified to receive unemployment insurance benefits.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs