

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DALINA BETWELL
Claimant

KINSETH HOTEL CORPORATION
Employer

APPEAL 17A-UI-09933-DL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/27/17
Claimant: Respondent (2R)

Iowa Code Chapter 95 – Requalification
Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 18, 2017, (reference 04) unemployment insurance decision that allowed benefits and found the protest untimely. After due notice was issued, a hearing was held by telephone conference call on October 13, 2017. The hearing was consolidated with appeals 17A-UI-09931 and 17A-UI-09932 on identical issues, except for claimant requalification or lack thereof, which was determined by official notice of the administrative record. Official notice was also taken of the SIDES record. Claimant did not respond to the hearing notice instruction by registering for the hearing and did not participate. Employer participated through Employer’s Unity claims specialist Kristen Aragon. Robin Quon of Employers Unity represented the employer. Employer’s Exhibit 1 was received.

ISSUES:

Is the employer’s protest timely?
Has the claimant requalified for benefits since the separation from this employer?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The SIDES notice of claim was e-mailed to the employer's address of record on August 29, 2017. The employer representative attempted to file its protest in the SIDES system on September 11, 2017, which was not operable, so successfully faxed the response the same day. (Employer’s Exhibit 1) The representative was not able to enter the response into the SIDES system until September 13, 2017. The administrative record reflects the claimant has not requalified for benefits since the separation from the employer. The claimant’s June 21, 2017, 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 protest is timely.

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.

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 section 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 section 96.6(2) that deals with the time limit to file a protest after the notice of claim has been mailed to the employer.

The employer received the notice of claim within the protest period but has established it responded by fax rather than SIDES while that system was not accepting protest responses. The fax protest response is considered timely. This is a valid excuse for filing its protest on SIDES after the deadline. Iowa Admin. Code r. 871-24.35(2). When the Department requires employers to submit a protest via SIDES, it has the responsibility to make sure its program and equipment work properly and, in this case it did not.

DECISION:

The September 18, 2017, (reference 04) 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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/scn