

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDA K REWERTS
Claimant

APPEAL NO: 09A-UI-00562-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RICHELIEU FOODS INC
Employer

OC: 12/14/08 R: 03
Claimant: Respondent (1)

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

Richelieu Foods, Inc. (employer) appealed a representative's January 8, 2009 decision (reference 01) that concluded Linda K. Rewerts (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the employer did not file a timely protest. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 29, 2009. The claimant participated in the hearing. Denise McQuarie, an ADP representative, Larry Rasmussen, the plant controller and human resource manager, and Dale Ackerman appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer file 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 December 14, 2008. On December 19, 2008, the Department mailed a notice to the employer's representative, ADP-UCS, indicating the claimant had filed a claim for benefits and the maximum amount of money that could be charged against the employer's account. The notice of claim indicated the employer had until December 29, 2008, to file a response to the notice.

The ADP-UCS received the notice of claim on December 26, 2008, about 5:30 p.m. Central Standard time. ADP sent the employer an email indicating a notice of claim had been filed regarding the claimant. ADP wanted to know if the employer wanted to protest charges to its account.

ADP personnel called the employer's office on December 29, 2008. ADP personnel talked to the operator and learned Rasmussen was not at work and there was no one in the office that could obtain the claimant's employment information or make the decision as to whether the employer wanted to protest the claim.

Rasmussen was at work on December 30, 2008. He instructed ADP to protest the claim and provided the reason for the protest. ADP faxed the employer's completed protest to the Department on December 30, 2008.

The claimant started working for the employer on April 16, 2007. She gave the employer a two-week notice that October 1, 2008, would be her last day of work because she had accepted another job. The claimant worked for the new employer and earned more than \$2,260.00 in wages between October 1 and December 14, 2008.

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 section 96.6-2. Another portion of Iowa Code 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. 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 section 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 employer's representative received the notice of claim on December 26, or before the initial ten-day deadline to protest. ADP personnel took reasonable steps to find out if the employer wanted to protest the claim. At that time, only Rasmussen had access to personnel files and he was on vacation on December 29, 2008. Since the employer did not have anyone to handle Rasmussen's job duties in his absence, but the employer received the notice of claim before the December 29 deadline to protest, the employer did not establish a legal excuse for filing its protest on December 30, one day late. 871 IAC 24.35(2).

Since the employer did not file a timely protest or establish a legal excuse for filing a late protest, the Appeals Section does not have legal jurisdiction to relieve the employer's account from charge.

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 or this employment separation.

DECISION:

The representative's January 8, 2009 decision (reference 01) is affirmed. 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 legal jurisdiction to relieve the employer's account from charge. Since the claimant requalified before she established her claim for unemployment insurance benefits, she remains qualified to receive unemployment insurance benefits.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs