

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

NATALIE R ROSTON
1519 PARK AVE SE
CEDAR RAPIDS IA 52403

CEDAR RAPIDS COMM SCHOOL DIST
C/O PAYROLL DEPT
346 – 2ND AVE SW
CEDAR RAPIDS IA 52404-2045

Appeal Number: 04A-UI-08296-DWT
OC: 06/27/04 R: 03
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

Cedar Rapids Community School District (employer) appealed a representative's July 19, 2004 decision (reference 01) that concluded Natalie R. Roston (claimant) was eligible to receive unemployment insurance benefits, and the employer's account was subject to charge because the employer had not filed a timely protest. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 24, 2004. The claimant was not available for the hearing. The claimant did not request a continuance prior to the hearing. Ann Feldman and Jean Milne testified on the employer's behalf. Connie Brown was available to testify. Based on the evidence, the arguments of the employer, 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 a timely protest or establish a legal excuse for filing a late appeal?

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits during the week of June 27, 2004. On June 29, 2004, the Department mailed a notice 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. The notice of claim indicated the employer had until July 9, 2004 to respond to the notice.

The employer received the notice on July 1, 2004. The employer completed the form and mailed it on July 8. The employer did not mail the completed form to Iowa Workforce Development Department. Instead, the notice of claim was mailed to IPERS. IPERS called the employer on July 9 and left a voice message that the notice of claim form had been mailed to the wrong address. The person who received the voice mail was on vacation on July 9.

Milne did not learn about the misdirected protest until July 16, 2004. She immediately contacted a representative with Workforce Development and faxed the employer's protest to the Department on July 16, 2004.

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 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 §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 on July 1, 2004. The employer mailed a protest on July 8, which is within the ten-day deadline. The employer, however, did not mail the notice to the correct address. As a result of the employer's mistake, inadvertent negligence, the employer did not file a protest with the Department until July 16, 2004.

The employer did not establish a legal excuse for filing its protest on July 16, 2004. 871 IAC 24.35(2). The employer's failure to mail or fax the protest to the Department is similar to a party who intends to protest a claim but misplaces the form or forgets to mail the form. Even though the employer intended to mail the completed protest on July 8, the employer did not file a timely protest or establish a legal excuse for filing a late protest by mailing the protest to the wrong address. Therefore, there is no legal jurisdiction to relieve the employer's account from charge. See Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979); and Pepsi-Cola Bottling Company v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

(Even though the employer presented information about other issues, these cannot be addressed because the employer did not file a timely protest. The record indicates the claimant has only filed three weekly claims July 3 through 17, 2004 and received partial benefits for these weeks.)

DECISION:

The representative's July 19, 2004 decision (reference 01) is affirmed. The employer did not file a timely protest or establish a legal excuse for filing a late protest. There is no legal jurisdiction to relieve the employer's account from charge. As of June 27, 2004, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements.

dlw/kjf