

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**KATHY MAUS**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL NO. 14A-UI-11242-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/05/14**  
**Claimant: Respondent (4/R)**

Iowa Code § 96.6-2 - Timeliness of Protest

**STATEMENT OF THE CASE:**

Hy-Vee, Inc. (employer) appealed an unemployment insurance decision dated October 23, 2014, (reference 01), which held it failed to file a timely protest regarding the claimant's separation of employment on October 7, 2014, and no disqualification of unemployment insurance benefits was imposed. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 18, 2014. The claimant participated in the hearing. The employer participated through Stacey Lopez, Employer Representative. Exhibit D-1 was admitted into evidence.

**ISSUE:**

The issue is whether the employer's protest was timely.

**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 October 10, 2014. The notice of claim contains a warning that any protest must be postmarked or returned not later than ten days from the initial mailing date. The employer representative testified the notice of claim was not received until October 22, 2014, and it filed its protest on that same date.

The issues regarding the claimant's separation from employment have not yet been investigated or adjudicated at the claims level.

**REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer submitted a timely protest. An employer has ten days from the date a notice of claim is mailed to its last-known address to protest the payment of benefits to the claimant. See Iowa Code § 96.6-2.

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.

In the case herein, the employer did not have an opportunity to protest the notice of claim in a timely manner because it was received after the due date. Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The employer filed the protest on the same day it was received. Therefore, the protest shall be accepted as timely.

Since the separation issues have not yet been adjudicated, the case will be remanded for an initial investigation and determination.

**DECISION:**

The employer's protest is timely. The unemployment insurance decision dated October 23, 2014, (reference 01), is modified in favor of the appellant. The case is remanded for an initial investigation and determination.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs