

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CLARA V PENA
Claimant

AZULE STAFFING LLC
Employer

APPEAL 17A-UI-01311-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/25/16
Claimant: Respondent (4)

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 January 24, 2017, (reference 05) unemployment insurance decision that allowed benefits and found the protest untimely without having held a fact-finding interview pursuant to Iowa Admin. Code r. 871-24.9(2)b. After due notice was issued, a hearing was conducted by telephone conference call on February 27, 2017. The claimant did not register a phone number with the Appeals Bureau and did not participate. The employer participated through Dara Yang, risk manager. Department's Exhibit D-1 was received. The administrative law judge took official notice of the administrative record, including the Notice of Claim and protest.

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 notice of claim was mailed to the employer's address of record on December 28, 2016, and was received December 30, 2016, within the protest period. The administrative law judge would note the incorrect suite number was used in the address, as it should reflect "suite 208" and not "suite 2". The employer attempted to file its protest on January 5, 2017, by fax but the line was busy or the transmission failed for reasons unrelated to the employer. The notice of protest was then placed in the mail on January 9, 2017, after three attempts to fax to 515-281-6208 between January 5 through 9, 2017 were unsuccessful. The notice of claim was postmarked on January 10, 2017 (Department Exhibit D-1), one day after its due date. If the employer experiences similar difficulty in the future, the protest may always be submitted by mail as long as it is postmarked by the due date.

The claimant has requalified for benefits since the separation from the employer.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether employer's protest is timely. The administrative law judge concludes it is.

Iowa Code § 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.

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 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. 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 § 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 a legal excuse for filing its protest after the deadline. Iowa Admin. Code r. 871-24.35(2). In this case, the employer made three attempts to file its protest to a valid fax number between January 5 and 9, 2017, within the period to reply. When it could not successfully submit the claim via fax, it attempted to mail it on the final day to respond, January 9, 2017. However, the envelope was not postmarked until January 10, 2017. The administrative law judge is persuaded the employer made good faith efforts to respond to the claim within the time prescribed.

When the Department allows employers to submit a protest by fax, the Department has the responsibility to make sure its equipment works properly and, in this case, did not. Based on the evidence, the Appeals Bureau has legal jurisdiction to determine whether the employer's account can be relieved from charges. The administrative law judge further concludes that the claimant has requalified for benefits since the separation from this employer. Accordingly, benefits are allowed and the account of the employer shall not be charged.

DECISION:

The January 24, 2017, (reference 05) unemployment insurance decision is modified in favor of the appellant. The employer has filed a timely protest and the claimant has requalified for benefits since the separation. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer shall not be charged.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

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NOTE TO EMPLOYER:

If you wish to change the street name of record, please access your account at:

<https://www.myiowauui.org/UITIPTaxWeb/>.

Helpful information about using this site may be found at:

<http://www.iowaworkforce.org/ui/uiemployers.htm> and

http://www.youtube.com/watch?v=_mpCM8FGQoY