

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

APRIL J SOLUM

Claimant

VILLA ENTERPRISES INC

Employer

APPEAL NO. 12A-UI-13089-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/23/12

Claimant: Respondent (2)

Section 96.6-2 – Timely Protest

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated October 18, 2012, reference 02, which held that the employer failed to file a timely protest. After due notice, a telephone conference hearing was scheduled for and held on November 26, 2012. The claimant participated personally. The employer participated by Sheri Sonko, the lead coordinator for ADP, and Mike Curtis, the area manager for the employer. Alyce Smolsky represented the employer. The record consists of the testimony of Sheri Sonko and Employer's Exhibits A and B. Official notice is taken of agency records.

ISSUE:

Whether the employer filed a timely protest.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

On September 23, 2012, the claimant established an original claim for unemployment insurance benefits. A notice of claim was sent to a former employer – Villa Enterprises Inc. The address used was 25 Washington St. #2501, Morristown, NJ 07960.

The employer's address of record was Villa Enterprises, Inc., C/O ADP UCM and TALX UCM Services, Inc., PO Box 66744, St. Louis, Mo 63166. (Exhibit A) This was attested to by the state of Iowa on January 30, 2007. (Exhibit B)

The employer's representative only became aware of the notice of claim when the employer sent the notice of claim to the employer's representative on October 11, 2012. A prompt investigation was done and a protest filed on October 12, 2012.

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 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 administrative law judge considers the reasoning and holding of the Beardslee court 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. Compliance with the protest provisions is jurisdictional unless the facts of a case show that the notice was invalid. Beardslee, 276 N.W.2d 373, 377 (Iowa 1979); see also In re Appeal of Elliott, 319 N.W.2d 244, 247 (Iowa 1982). Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), protests are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983). The question in this case thus becomes whether the employer was deprived of a reasonable opportunity to assert a protest in a timely fashion. Hendren v. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC, 212 N.W.2d 471, 472 (Iowa 1973).

871 IAC 24.35(2) provides in pertinent part:

The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the department that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service or its successor.

The employer's protest will be deemed a timely protest. The department failed to send the notice of claim to the employer's duly designated representative of record and instead sent the notice of claim directly to the employer. As soon as the employer's representative received this notice of claim from the employer, prompt action was taken to file a protest. Since there was agency error, the employer was deprived of a reasonable opportunity to assert a protest in a timely manner. The protest is therefore timely.

This case will be remanded to the Claims Division to consider the separation issues.

DECISION:

The decision of the representative dated October 18, 2012, reference 02, is reversed. The employer's protest is timely. This matter is remanded to the Claims Division to consider the separation issues.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css