

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ELHADI ADAM
Claimant

NORDSTROM INC
Employer

APPEAL 16A-UI-10659-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/22/16
Claimant: Respondent (2-R)

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed an appeal from the September 28, 2016, (reference 01) unemployment insurance decision that allowed benefits based upon an untimely protest. The parties were properly notified about the hearing. A telephone hearing was held on October 13, 2016. Claimant participated. Employer participated through Equifax unemployment insurance claims specialist Lora Perry. The administrative law judge took official notice of the administrative record, including fact-finding documents. Employer's Exhibits A and B were received.

ISSUE:

Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant's notice of claim was mailed to employer's address of record on May 26, 2016, and was received by employer within ten days. The employer filed its protest in the form of a narrative, but with clear reference to response to the form 201A Notice of Claim and request for relief from benefit charges, on the due date, June 6, 2016, by fax to the appropriate number. (Employer's Exhibit A) The claimant's December 14, 2015, separation from employment has not yet been the subject of a Benefits Bureau fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

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 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. 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 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.

The employer filed a protest in a timely manner on June 6, 2016, but the agency did not receive the fax transmission. Immediately upon receipt of information to that effect, the protest was re-filed. Therefore, the protest shall be accepted as timely.

DECISION:

The September 28, 2016, (reference 01) unemployment insurance decision is reversed. The employer has filed a timely protest.

REMAND:

The December 14, 2015, separation issue is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision. In the future, the employer's representative is advised to submit the appropriate form when protesting the claim so it may avoid being overlooked.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs