

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RONALD G DAVIS**  
Claimant

**APPEAL NO: 12A-UI-14919-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**L A LEASING INC/SEDONA STAFFING**  
Employer

**OC: 09/23/12**  
**Claimant: Respondent (4)**

Section 96.6-2 – Timeliness of Protest  
Section 96.5-1 – Voluntary Leaving/Requalification

**STATEMENT OF THE CASE:**

L A Leasing, Inc. / Sedona Staffing (employer) appealed a representative's December 13, 2012 decision (reference 02) that concluded Ronald G. Davis (claimant) was qualified to receive unemployment insurance benefits and the employer's account might be charged because the employer's protest was not timely filed. Hearing notices were mailed to the parties' last-known addresses of record for a telephone hearing to be held on January 24, 2013. Prior to the hearing being held, the administrative law judge determined that no hearing was necessary and a decision was made on the record. Based on a review of the available information and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Should the employer's protest be treated as timely? Is the employer's account subject to charge?

**OUTCOME:**

Modified. Benefits allowed, but the employer's account is not subject to charge.

**FINDINGS OF FACT:**

The claimant established a claim for unemployment insurance benefits effective September 23, 2012. A notice of claim was mailed to the employer's last-known address of record on September 27, 2012. The employer received the notice. The notice contained a warning that a protest must be postmarked or received by the Agency by October 9, 2012.

Agency records show that the Agency's Claims Section received a protest from the employer by fax at 4:40 p.m. on October 5, 2012, and the protest was stamped by the Section as received on that date. For unknown reasons, it appears that the employer subsequently resubmitted the exact same protest to the Agency, where it was received and stamped as received on October 12, which would have been late. When the Claims representative reviewed the matter,

based upon the protest received on October 12, the representative concluded that the protest was late because it was after the date noticed on the notice of claim.

The claimant's last day of work for the employer was May 11, 2012. The employer asserted that the claimant left his employment with the employer to take other employment, which may be the case. When the claimant established his claim for unemployment insurance benefits, his weekly benefit amount was determined to be \$155.00. Agency records show that at the very least, after the claimant's separation from this employer, he earned insured wages from another employer exceeding \$1,550.00.

#### **REASONING AND CONCLUSIONS OF LAW:**

The preliminary issue in this matter is whether the employer filed a timely protest. 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 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 § 96.6-2 which deals with the time limit to file a protest after the notice of claim has been mailed to the employer. 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). The record shows that the employer did file a timely protest.

The record establishes the Agency received a completed protest from the employer within the time for filing a timely protest. The administrative law judge concludes that the Agency's failure to recognize that there had been a timely protest when the duplicate protest was received on October 12 was due to error, delay or other action of the Agency pursuant to 871 IAC 24.35(2). The administrative law judge, therefore, concludes that the protest should be treated as timely filed pursuant to Iowa Code § 96.6-2.

The wages the claimant earned from the employer are in his base period. The employer asserted the claimant voluntarily quit as of May 11, 2012. However, this issue does not need to be resolved because after the claimant worked for the employer but before he filed his claim for benefits effective September 23, 2012, he earned more than \$1,550.00 in wages from another employer. As a result, the reasons for his separation from the employer in May 2012 do not affect the claimant's eligibility to receive unemployment insurance benefits. 871 IAC 24.28(1). This also means the employer's account will not be charged for any benefits the claimant receives. Accordingly, benefits are allowed and the account of the employer shall not be charged.

**DECISION:**

The representative's December 13, 2012 decision (reference 02) is modified in favor of the appellant. The employer's protest is treated as timely. The claimant has requalified for benefits since the May 2012 separation. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer shall not be charged.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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