

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JEFFREY A IRWIN
Claimant

DOHERTY STAFFING SOLUTIONS
Employer

APPEAL 14A-UI-04420-LT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/22/13
Claimant: Respondent (1-R)

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed an appeal from the April 23, 2014, (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 May 19, 2014. Claimant responded to the hearing notice instructions but did not participate as the issue was resolved before the scheduled hearing time without prejudice to either party. Claimant was notified the issue of accurate wage reporting would be remanded to the Benefits Bureau for resolution. Employer participated through unemployment insurance advisor Glenda Niemiec. The hearing recording is located under appeal 14A-UI-04420-L-T.

ISSUE:

Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Claimant's notice of claim was mailed to employer's address of record on December 27, 2013, and was received by employer within ten days. The notice of claim contains a warning that any protest must be postmarked, faxed or returned not later than ten days from the initial mailing date. The employer did not file a protest until April 18, 2014, which is after the ten-day period had expired because the claimant was on a seasonal layoff at the time the notice of claim was filed and there was no protest to benefits. However, the claimant later separated from the employment on March 29, 2014. By self-generating the protest at that time, the employer was attempting to notify IWD of the separation. Because the information was supplied on the form 201A Notice of Claim form rather than the Notice of Separation or Refusal of Work Under Conditions That May Disqualify 60-0154 form and the claim had become inactive, it was treated as a protest. If the claimant reopens the claim or files an additional claim, a new Notice of Claim will be generated and sent to the employer. Either full or partial benefits were claimed and paid to the claimant in the form of a prior overpayment offset during the five weeks ending January 25, 2014. No further benefits were claimed or paid.

The employer has different wage payment figures for the weeks claimed and paid. That issue is remanded to the Benefits Bureau for an initial investigation and determination with an opportunity for both parties to provide information.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that employer has failed to protest within the time period prescribed by the Iowa Employment Security Law.

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.

Another portion of this same Code section dealing with timeliness of an appeal from a representative's decision states that such 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 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. The employer has not shown any good cause for not complying with the jurisdictional time limit. Therefore, the administrative law judge is without jurisdiction to entertain any appeal regarding the separation from employment.

The protest on the original claim is not considered timely, although the employer does not dispute charges until the separation date. Since no benefits were claimed or paid after the separation date, any protest is moot. The employer will have an opportunity to protest any further claims on which it might be liable for benefit charges.

DECISION:

The April 23, 2014, (reference 01) decision is affirmed. Employer has failed to file a timely protest, and the decision of the representative shall stand and remain in full force and effect. The employer will be notified of and have an opportunity to protest any further claims on which it might be liable for benefit charges.

REMAND:

The wage reporting issue delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs