

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHANIE OUVERSON
Claimant

APPEAL NO: 15A-UI-023731-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FLYING MANGO INC
Employer

OC: 11/23/14
Claimant: Respondent (1)

Iowa Code § 96.6(2) – Timely Protest

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's February 20, 2015 (reference 01) determination that held the employer's account subject to charge because the employer did not file a timely protest. The claimant participated at the March 26, 2015 hearing. Suzanne Van Englehovern-Wedeking and Mike Wedeking, the owners, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge cannot relieve the employer's account from charge.

ISSUE:

Did the employer file a timely protest or establish a legal excuse for filing a late protest?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of November 23, 2014. A notice of claim was mailed to the employer on November 25, 2014. The notice of claim informed the employer the maximum amount that could be charged to its account during the claimant's benefit year and that a protest had to be filed with the Department on or before December 5, 2014.

During this same time, the owners went to Florida to be with a terminally ill sibling while still trying to run their business in Iowa. The owners spent about eight weeks jockeying between Florida and Iowa. The owners returned to Iowa in late January. They then had to play catch up with bills and paperwork that had accumulated when they were out-of-state. It was not until February 16, that the employer was able to complete this protest and then mailed it on February 18, 2015.

The claimant worked for the employer until December 21, 2013. She left for another job. After the claimant left on December 21, 2013, but before she established her claim for benefits during the week of November 23, 2014, she earned more than \$2320 in wages from subsequent employment. The claimant's maximum weekly benefit amount is \$232.

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 § 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. IDJS*, 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) which deals with the time limit to file a protest after the notice of claim has been mailed to the employer. The facts indicate the employer was preoccupied with personal matters from late November 2014 through late January 2015. In late January 2015, the employer returned to Iowa after spending an emotional eight weeks in Florida. While I understand the employer's position and am sympathetic to the employer's situation, the employer did not establish a legal excuse for filing its protest late on February 18, 2015. Under the facts of this case the employer did not file a timely protest or establish a legal excuse for filing a late protest. The Appeals Bureau does not have any legal jurisdiction to relieve the employer's account from charge.

The claimant remains eligible to receive benefits. The claimant earned more than ten times her weekly benefit amount after December 21, 2013 but before November 23, 2014. Even if the claimant's December 21, 2013 employment separation was for disqualifying reasons, she would be eligible to receive benefits based on the wages she earned after working for the employer.

DECISION:

The representative's February 20, 2015 (reference 01) determination is affirmed. The employer did not file a timely protest or establish a legal excuse for filing a late protest. The Appeals Bureau does not have any legal jurisdiction to relieve the employer's account from charge. Regardless of the reason for the claimant's December 21, 2013 employment separation, she earned requalifying wages before she established her claim for benefits during the week of November 23, 2014. Therefore, the claimant is eligible to receive benefits, provided she meets all other eligibility requirements.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/can