

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STEPHEN R HAMMER**  
Claimant

**APPEAL NO: 12A-UI-14287-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BBMG MILLS CIVIC PARKWAY LLC**  
Employer

**OC: 11/11/12  
Claimant: Respondent (1/R)**

Iowa Code § 96.6(2) – Timeliness of Protest

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's December 5, 2012 determination (reference 01) that held the claimant eligible to receive benefits and the employer's account subject to charge because the employer had not filed a timely protest. The claimant participated in the hearing. Steve McFadden, the owner, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the employer did not file a timely protest. This matter will be remanded to the Claims Section to investigate other issues.

**ISSUE:**

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

**FINDINGS OF FACT:**

The claimant worked for the employer from May 6, 2011, through May 22, 2012. The claimant resigned in part because another employer offered him more money. The claimant worked and earned more than ten times his weekly benefit amount of \$230.00 after he worked for the employer and before he established a claim during the week of November 11, 2012.

A notice of claim was mailed to the employer on November 20, 2012. The notice of claim informed the employer a protest had to be filed on or before November 30, 2012. McFadden went on vacation and was out of the country from November 22 through December 2, 2012. When McFadden was out of the office, no one had been delegated to open the mail in McFadden's absence and handle time sensitive mail. While McFadden does not know what date the employer received the notice of claim, he believed the employer had it on or before November 30, 2012.

When McFadden went to work on December 3, he saw the notice of claim and completed the form. He faxed the completed protest to the Department on December 3. The Department received the faxed protest the morning of December 4, 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 § 96.6(2). Another portion of Iowa Code § 96.6(2) dealing with timeliness of an appeal from a representative's determination states an appeal must be filed within ten days after notification of that determination 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 received the notice of claim on or before November 30, 2012 or in time to file a timely protest if the owner had not been on vacation.

Since the employer's office received the notice of claim on or before November 30, 2012, if McFadden had been working instead of on vacation or if he had designated someone to open mail to determine if anything was time sensitive, the employer could have filed a timely protest. The employer did not establish legal excuse for filing a late protest on December 3, instead of on or before November 30, 2012. 871 IAC 24.35(2). The employer did not file a timely protest for personal reasons – the owner was in vacation and does not have anyone to open his mail when he is gone. The Appeals Section does have jurisdiction to relieve the employer's account from charge.

The employer presented information that in late December 2012, the claimant worked for the employer but would not continue even though the employer asked him to continue working. Since the late December employment separation or refusal to accept the employer's job offer of continued employment were not issues noted on the hearing notice, these issues will be remanded to the Claims Section to determine.

**DECISION:**

The representative's December 5, 2012 determination (reference 01) is affirmed. The employer did not file a timely protest or establish a legal excuse for filing a late protest. As a result, the Appeals Section does not have jurisdiction to relieve the employer's account from charge. After the claimant worked for the employer but before he established s claim for benefits, he earned requalifying wages. Therefore, based on his May 2012 employment separation with the employer, he is qualified to receive benefits.

The issues of whether the claimant refused the employer's late December offer of work with or without good cause or whether his late December employment separation is for disqualifying or nondisqualifying reasons is **Remanded** to the Claims Section to investigate and determine.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css