

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HENRY CHAVEZ**  
Claimant

**APPEAL NO. 08A-UI-02588-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OZARK AUTOMOTIVE DISTRIBUTORS INC**  
Employer

**OC: 02/10/08 R: 03  
Claimant: Respondent (1)**

Section 96.6-2 - Timeliness of Protest

**STATEMENT OF THE CASE:**

Ozark Automotive Distributors, Inc. (employer) appealed a representative's March 5, 2008 decision (reference 02) that concluded Henry Chavez (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the employer had not made a timely protest. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 1, 2008. The claimant participated in the hearing. Whitney Smith appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

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

**FINDINGS OF FACT:**

The claimant started working for the employer on February 5, 2007. The employer hired the claimant as a full-time employee who was required to satisfactorily complete his probationary employment. The claimant's probation ended in late May 2007.

During the course of his employment, the employer talked to the claimant about his failure to meet the employer's production guideline or quota. At the end of the claimant's probation, the claimant still had problems meeting the employer's production requirements. On May 30, 2007, the employer discharged the claimant for failing to satisfactorily complete his probation.

The claimant worked for another employer between May 30, 2007, and February 10, 2008. The claimant earned more than \$2,390.00 in wages during this time.

The claimant established a claim for benefits during the week of February 10, 2008. On February 20, 2008, the Department mailed a notice of claim to the employer's address of record. The notice informed the employer the claimant had filed a claim for benefits and the maximum amount of money that could be charged against the employer's account. The notice

of claim also indicated the employer had until March 3, 2008, to respond to the notice by faxing it or have it postmarked on or before March 3, 2008.

The employer's corporate office, the employer's address of record, received the notice of claim prior to March 3, 2008. The employer's corporate office completed the protest and attempted to fax the protest on March 3. The employer attempted to fax the completed form on March 3 at 4:32 p.m. The fax transmission report at 4:49 p.m. indicated the fax had not been successfully transmitted. The employer successfully transmitted the completed protest on March 4, 2008.

#### **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 received the notice of claim prior to the March 3 initial ten-day deadline date. Even though the employer attempted to fax the completed protest on March 3, the fax did not go through. The employer could have mailed the protest and taken it to the post office so it was postmarked on March 3, or the employer could have faxed the form later on March 3. The employer did not establish a legal excuse for filing its protest on March 4, a day late. 871 IAC 24.35(2). Under the facts of this case the employer did not file a timely protest or establish a legal excuse for filing a late protest. Therefore, there is no legal jurisdiction to relieve the employer's account from charge. See Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979); and Pepsi-Cola Bottling Company v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

After the claimant worked for the employer but prior to establishing his claim for benefits, he earned ten times his weekly benefit amount from subsequent employment. As a result, there is no legal consequence to the claimant.

#### **DECISION:**

The representative's March 5, 2008 decision (reference 02) is affirmed. The employer did not file a timely protest or establish a legal excuse for filing a late protest. Therefore, the Appeals Section has no legal jurisdiction to relieve the employer's account from charge and the employer's account may be charged for benefits paid to the claimant. The claimant requalified

before he established his claim for unemployment insurance benefits. He remains qualified to receive unemployment insurance benefits.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css