

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HEATHER D GARCIA
Claimant

APPEAL NO: 13A-UI-02317-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LUING LLC
Employer

OC: 02/03/13

Claimant: Respondent (4)

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

STATEMENT OF THE CASE:

Luing, L.L.C. (employer) appealed a representative's February 21, 2013 decision (reference 02) that concluded Heather D. Garcia (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. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 26, 2013. The claimant opted not to participate in the hearing as the hearing had no bearing on her eligibility. Rebecca Luing appeared on the employer's behalf. Based on the evidence, the arguments of the employer, 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?

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits effective February 3, 2013. A notice of claim was mailed to the employer's last-known address of record on February 7, 2013. The notice contained a warning that a protest must be postmarked or received by the Agency by February 19, 2013. The protest was not filed until it was faxed on February 20, 2013, which is after the date noticed on the notice of claim.

The employer, which had been located in Paton, Iowa, sold its business and closed in October 2012. It arranged with the United States Postal Service to have its mail forwarded to the residence address of the owners. In early 2013, the owners moved from that residence to a residence in Sioux Falls, South Dakota, and arranged with the United States Postal Service to have their mail forwarded from the prior residence to their new residence. The notice of claimant which was originally sent to the employer's former business address was forwarded by the Postal Service first to the prior residence and then to the new residence. However, this resulted in the notice not being delivered to the owners' new residence until February 19;

Ms. Luing, one of the former owners, returned home from work on the evening of February 19 and found the notice had come in the mail that day. She took the notice to work with her the next day, February 20, and faxed the protest to the Agency on that date, asserting that there had been a March 2, 2012 separation which could have been disqualifying to the claimant.

The claimant's weekly benefit amount was calculated to be \$152.00. Agency records show that after the claimant's separation from this employer, she earned insured wages from another employer exceeding \$1,520.00.

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 not have a reasonable opportunity to file a timely protest.

The record establishes that the employer's representative did not receive the notice of claim until late on February 19, 2013. The employer was not responsible for the delay in receiving the notice of claim, but the delay was due to department error or misinformation or delay or other action of the United States Postal Service. The employer did file its protest within ten days of actually receiving the notice. The administrative law judge, therefore, concludes that the protest was timely filed pursuant to Iowa Code § 96.6-2.

A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a. However, in either case, there would no longer be any potential of disqualification after the claimant has earned ten times her weekly benefit amount in other employment after the separation which was asserted to be disqualifying. In that event, the employer's account is also not subject to charge. The administrative law judge concludes from information contained in the administrative record that the claimant has requalified for benefits since the separation from this employer. Accordingly, benefits are allowed to the claimant, and the account of the employer shall not be charged.

DECISION:

The representative's February 21, 2013 decision (reference 02) is modified in favor of the appellant. The employer's protest was timely. Regardless as to the conditions of the February 2, 2012 separation, the claimant has requalified for benefits since the separation. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer shall not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs