

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**CAPRICAEL R JAMES**  
Claimant

**MERIT RESOURCES II INC**  
Employer

**APPEAL 16A-UI-13467-JP-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/20/16**  
**Claimant: Respondent (2-R)**

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Iowa Code § 96.6(2) – Timeliness of Protest

**STATEMENT OF THE CASE:**

Employer filed an appeal from the December 9, 2016, (reference 03) decision that found the protest untimely and allowed benefits. After due notice was issued, a hearing was held by telephone conference call on January 11, 2017. Claimant did not participate. The employer participated by corporate human resource business partner Quint Bartlett. Official notice was taken of the administrative the fact-finding documents, with no objection. Employer Exhibit 1 was admitted into evidence with no objection.

**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 November 23, 2016. The employer received the notice of claim on November 28, 2016. The notice of claim contained a warning that any protest must be postmarked, faxed or returned not later than ten days from the initial mailing date; the protest had to be filed by December 5, 2016. The employer filed its protest on December 5, 2016 around 11:18 a.m. via e-mail to Iowa Workforce Development. Employer Exhibit 1. The employer usually gets a confirmation e-mail for a protest, but Mr. Bartlett did not receive a confirmation e-mail. Mr. Bartlett found out there was an issue with the receipt of the employer's protest when the employer received the decision that its protest was untimely. Mr. Bartlett is not aware of the employer sending a follow-up protest on December 6, 2016. Mr. Bartlett is the person that is responsible for sending the protests.

**REASONING AND CONCLUSIONS OF LAW:**

The first issue is whether employer's protest is timely. The administrative law judge concludes it is.

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.

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 section 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. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979). The reasoning and holding of the Beardslee court is considered controlling on the portion of Iowa Code section 96.6(2) that deals with the time limit to file a protest after the notice of claim has been mailed to the employer. The employer filed a protest on December 5, 2016, but the agency marked the protest as received until December 6, 2016. Employer Exhibit 1. Because the employer provided sufficient evidence it e-mailed its protest within a timely manner, the protest shall be accepted as timely.

**DECISION:**

The December 9, 2016, (reference 03) unemployment insurance decision is reversed. The employer filed a timely protest.

**REMAND:** The separation issue is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

jp/rvs