

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CRYSTAL D VODOCHODSKY
Claimant

APPEAL NO: 10A-UI-00989-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SUBWAY
Employer

OC: 12/20/09
Claimant: Respondent (1)

Section 96.6-2 – Timely Protest

STATEMENT OF THE CASE:

The employer appealed a representative's January 13, 2010 decision (reference 01) that concluded the claimant was eligible to receive benefits, and the employer's account was subject to charge because the employer did not file a timely protest. A telephone hearing was held on March 1, 2010. Before the hearing, the claimant sent the Appeals Section a letter indicating she had no plans to participate in the hearing. Dan Sigwards 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:

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

Is the employer's account subject to charge/

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of December 20, 2009. On December 24, 2009, the Department mailed a notice of claim to the employer indicating 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 indicated the employer had until January 4, 2010, to respond to the notice.

It is not known when the employer received the notice of claim. Since the notice of claim was mailed right before Christmas, the employer was very busy with the holidays. The employer completed the form on January 4, 2010. The employer did not fax the form until the next day, January 5, 2010.

The claimant worked for the employer October 31, 2008, through June 20, 2009. The claimant was scheduled to work after June 20, 2009, but she did not call or report to work after June 20. Between June 21 and December 20, 2009, the claimant worked for another employer and earned more than ten times her weekly benefit amount.

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 in time to file a timely protest on January 4, 2010. Although the holidays were very busy for the employer, the employer did not establish a legal excuse for filing its protest one day late on January 5, 2010. 871 IAC 24.35(2). Under the facts of this case there is no legal jurisdiction to relieve the employer's account from charge. See *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

After the claimant worked for the employer but prior to establishing her claim for benefits, she earned ten times her weekly benefit amount from another employer. As a result, there is no legal consequence to the claimant as a result of this decision.

DECISION:

The representative's January 13, 2010 decision (reference 01) is affirmed. The employer did not file a timely protest or establish a legal excuse for filing a late protest. Therefore, the employer's account remains subject to charge for benefits the claimant may receive. The claimant is eligible to receive benefits.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css