

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEBORAH R MORGAN
Claimant

EMPLOYMENT SERVICES OF CENTRAL IA
Employer

APPEAL 19A-UI-02920-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/10/19
Claimant: Respondent (4)

Iowa Code Chapter 96 – Requalification
Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

On April 5, 2019, Employment Services of Central Iowa (employer) filed an appeal from the March 27, 2019, reference 04, unemployment insurance decision that found the protest untimely and allowed benefits. After due notice was issued, a hearing was scheduled to be held by telephone conference call on April 26, 2019. The employer registered a witness for the hearing; however, no hearing was held as there was sufficient evidence in the appeal letter and administrative record to resolve the matter without testimony.

ISSUES:

Is the employer's protest timely?
Has the claimant requalified for benefits since the separation from this employer?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The claimant separated from employment on August 28, 2018 and filed a claim for benefits effective March 10, 2019. The claimant's weekly benefit amount is \$228.00. The administrative record shows the claimant has earned more than \$2,280.00 in insured wages since the separation and prior to filing the claim for benefits.

The notice of claim was mailed to employer's address of record on March 12 and was received by employer within ten days. The notice of claim contains a warning that the employer protest response is due ten days from the initial notice date and gave a response deadline of March 22, 2019. The employer attempted to file the protest on the afternoon of March 22. However, the fax was undeliverable that day and a notice was sent to the employer after repeated attempts to transmit over the weekend. On Monday, March 25, the employer resubmitted the protest which was successfully delivered.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that employer's protest shall be accepted as timely and the claimant has requalified for unemployment insurance benefits. Therefore, benefits are allowed, provided the claimant is otherwise eligible, and the employer's account shall not be charged.

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.

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

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 (whether electronically or via the USPS) 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. 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 § 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 received the notice of claim within the protest period but has established a legal excuse for filing its protest after the deadline. When the Department allows employers to submit a protest via fax, the Department has the responsibility to make sure its equipment works properly and, in this case, did not. The employer resubmitted the protest immediately after learning of the issue. Therefore, the employer's protest is accepted as timely.

The administrative record shows the claimant has requalified for benefits since the separation from this employer by earning ten times her weekly benefit amount in insured wages following the separation and before filing her claim for benefits. See Iowa Code §§ 96.5(1) and 96.5(2)a. Accordingly, benefits are allowed and the account of the employer shall not be charged.

DECISION:

The March 27, 2019, reference 04, unemployment insurance decision is modified in favor of the appellant. The employer has filed a timely protest and 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.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn